TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1923

No. [redacted]148

THE UNITED STATES OF AMERICA *EX REL.* NICOLAI MENSEVICH, APPELLANT,

vs.

ROBERT E. TOD, COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 9, 1923.

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INDEX.

	Original.	Print.
Record from U. S. district court for the southern district of New York	1	1
Writ of habeas corpus	1	1
Petition for writ	2	1
Return to writ	8	4
Warrant for deportation	17	10
Testimony of Nicolai Mansevich	19	11
Bronislaus Manikeff	21	12
Hyman Seid	22	16
Thomas C. Wilcox	24	18
Nicolai Mansevich (recalled)	28	24
Joseph S. Apelman	28	25
Mike Slaszek	35	37
John Buroshka	43	52
Findings of examining officer	45	54

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	Original.	Print.
Testimony of Nicolai Mansevich	49	56
Hyman Seid	52	58
Anna Seid	53	59
Thomas C. Wilcox	54	60
Joseph Apelman	60	64
Findings of examining officer	66	67
Copy of telegraphic warrant for arrest	68	68
Affidavit of Joseph S. Apelman	69	68
Exhibit B—Testimony of Nikolay Mansewich	70	69
D—Affidavit of Nikolay Mansewich	72	71
E—Translation of mandate issued to Mansewich	74	74
H—Agreement of Russian workers	75	74
Stipulation re "Volna"	78	76
Warrant for deportation of Mansevich	80	77
Letter, Department of Labor to U. S. Commissioner of Immigration at Montreal, Canada, March 7, 1922	81	78
Letter, Department of Labor to Hale, Nelles & Shorr, June 28, 1922	90	83
Letter, Department of State to McElroy and Reid, July 11, 1922	91	83
Letter, Department of State to William Hayward, July 11, 1922	92	83
Traverse to writ	94	84
Requests that court take judicial notice of certain matters	97	85
Notice of order	98	86
Order dismissing writ	99	87
Assignment of errors	100	88
Petition for appeal	103	89
Order allowing appeal	104	90
Order changing amount of bail	105	90
Citation and service	107	91
Order enlarging time	109	91
Stipulation as to transcript	110	92
Clerk's certificate	111	92

1 **Writ of Habeas Corpus.**

[Filed July 20, 1922.]

The President of the United States of America to Robert E. Tod, Commissioner of Immigration at Ellis Island New York Harbor, Greeting:

We command you that you have the body of Nicolai Mansevich or by whatever name he shall be called, before the United States District Court, at Room 235, Federal Building, in the Borough of Manhattan, City of New York, Southern District of New York, on the 16th day of June, 1922, at 10 o'clock in the forenoon of said day, to do and receive what shall then and there be considered concerning this purpose, and we further command you that you certify fully and at large to the said Court, at the said time and place, the cause of the imprisonment and detention of the said Nicolai Mansevich, by whatever name he shall be called or held.

And have you within there this writ.

Witness, the Honorable Learned Hand, one of the judges of the United States District Court for the Southern District of New York, at New York, the 9 day of June, 1922. Alex Gilchrist, Clerk. Hale, Nelles & Shorr, Attorneys for Relator, 80 East 11th Street, New York City.

The above writ is hereby allowed. Dated, New York, June 9, 1922. Jno. Knox, U. S. District Judge.

Writ dismissed,—stay of deportation granted provided an appeal is taken within twenty days.

July 20/22. By A. N. Hand.

[File endorsement omitted.]

2 **UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK.**

UNITED STATES OF AMERICA ex Rel., NICOLAI MANSEVICH, Relator,

against

ROBERT E. TOD, Commissioner of Immigration at the Port of New York, Respondent.

Petition for Writ of Habeas Corpus.

[Filed June 9, 1922.]

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The petition of Nicolai Mansevich respectfully shows to this Court as follows:

First. Your petitioner is a Russian citizen, 35 years of age; he was born in the Province of Grodno, Village of Tichny, Russia; he arrived in the United States on or about April 6, 1911, on the S. S. Carpathia and has been a resident of the United States since his arrival, residing in Detroit, Michigan, where he now resides with his wife and three children, born in the United States.

Second. He was never arrested prior to September, 1921.

Third. He was never a member of any party.

Fourth. On or about the 2nd day of September, 1921, while in the employ of the Ford Motor Company, at Detroit, Michigan, and while actually at work, your petitioner was taken out of the factory by an agent of the Department of Justice and arrested without any warrant and held in custody without any process of law to
3 and including the 6th day of September, 1921.

Fifth. Upon information and belief, on or about the 6th day of September, 1921, a warrant was issued charging your petitioner as follows: That he writes, publishes, or causes to be written or published, or knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published or displayed, or knowingly had in his possession for the purpose of circulation, distribution, publication, or display, written or printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States or of all forms of law; that he is an alien anarchist, that he believes in, advises, advocates or teaches the overthrow by force or violence of the Government of the United States or of all forms of law, and that he writes, publishes, or causes to be written or published, or knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or knowingly had in his possession for the purpose of circulation, distribution, publication, or display, written or printed matter advising, advocating, or teaching opposition to all organized government.

Sixth. On information and belief, said warrant was issued and such findings were based upon illegal proceedings taken and evidence obtained by the Department of Labor in violation of the rights to security of persons and due process of law guaranteed by Articles 4 and 5 of Amendments to the Constitution of the United States. Upon information and belief, on September 3, 1921, and theretofore and thereafter, the rules of the United States Depart-
4 ment of Labor, Bureau of Immigration, with respect to deportation proceedings, contained the following provisions:

"Rule 22, Subdivision 5 (*a*).—Upon receipt of a telegraphic or written warrant of arrest the alien shall be taken before the person or persons therein named or described and granted a hearing to enable him to show cause, if any there be, why he should not be deported. If the alien is unable to speak or understand English, an interpreter should be employed where practicable * * *

"Rule 22, Subdivision 5 (*b*).—At the beginning of the hearing under the warrant of arrest the alien shall be allowed to inspect the warrant of arrest and all the evidence on which it was issued, and shall be apprised that he may be represented by counsel. The alien

shall be required then and there to state whether he desires counsel or waives the same, and his reply shall be entered on the record. If counsel be selected, he shall be permitted to be present during the conduct of the hearing."

Upon information and belief, on September 3, 1921, no warrant of the Secretary of Labor for your petitioner's arrest had been issued and no such warrant was issued until September 6, 1921. From September 3, 1921 to September 6, 1921, your petitioner was confined in the County Jail in Detroit, Michigan, without any process of the state or the government. At said prison on September 3, 1921, your petitioner was brought before Robert W. Gangewere, United States Immigrant Inspector, an official and employe of the United States Department of Labor, and the said Gangewere commanded your petitioner to be sworn and to answer his questions. Your petitioner was not served with or shown or allowed to inspect any warrant of arrest or other document. Your petitioner was not advised that he could not lawfully be compelled to attend and answer
5 but on the contrary was compelled to attend by prison guards and commanded to answer by said immigration inspector.

Seventh. That your petitioner had a hearing on or about the 18th day of February, 1922, where he denied all the charges in the warrant.

Eighth. Upon information and belief, your petitioner has been ordered deported to Poland and was actually brought from Detroit to Ellis Island for deportation to Poland, of which country he is not a citizen and never intended to become one.

Ninth. Your petitioner is not an anarchist or a Communist. He does not believe nor does he advocate the overthrow of the Government of the United States by force or violence or otherwise. He is not affiliated with any organization that advocates or teaches the overthrow of government. He never distributed nor was he ever in possession of any literature in violation of the Act of Congress.

Tenth. Your petitioner is not imprisoned or detained by virtue of any process or mandate issued by any court of the United States or any judge thereof nor of any court within the United States or judge thereof nor is he committed or detained by virtue of a final judgment or decree of any competent tribunal made in a special proceeding instituted for any cause nor by virtue of execution or process issued upon a judgment, decree or final order other than aforesaid, if such warrant of deportation be called a final order of any character; that he is detained only by reason of the facts hereinbefore stated and which he respectfully shows to this Court was an illegal detention, being against the provisions of the Constitution of the United
6 States, and that such detention and the execution of said warrant of deportation is unfair.

Eleventh. That said warrant of arrest and said warrant of deportation were made without any power, authority or jurisdiction in the premises, and that in making the same, the Secretary of Labor *acceded* any jurisdiction, power or authority which he might have under said Immigration Act, and that the act in the premises,

as your petitioner is informed by his attorneys and verily believes, were illegal, null and void.

Twelfth. That the cause or pretense of your petitioner's imprisonment and restraint, according to the best of his knowledge, information and belief, is as above stated; and upon information and belief, your petitioner is deprived of life, liberty and property without due process of law in violation of Article 5 of Amendments to the Constitution of the United States and has been and now is subjected by the respondent to imprisonment or involuntary servitude otherwise than as a punishment for a crime in violation of Article 13 of Amendments to the Constitution of the United States.

Wherefore your petitioner prays that a writ of habeas corpus issue directing and commanding the United States Commissioner of Immigration at Ellis Island and any and all persons under his direction or control, to produce and bring up your petitioner before this Court for hearing and determination by this Court concerning his wrongful detention and restraint, and that your petitioner may have such other and further relief as may be just in the premises. Nikolai Mansevich, Petition-. Hale, Nelles & Shorr, Attorneys for Petitioner, 80 East 11th Street, New York City.

7 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Nicolai Mansevich, do solemnly swear that I am the petitioner above named, that I have heard read the foregoing petition and know the contents thereof and that the same is true to the best of my knowledge, information and belief. Nikolai Mansevich.

Sworn to before me this 9 day of June, 1922. Frederick Block, Notary Public, Richmond County. Certificate Filed in New York County.

[File endorsement omitted.]

8 United States District Court, Southern District of New York.

[Title omitted.]

Return to Writ of Habeas Corpus.

[Filed July 20, 1922.]

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John M. Lyons, being duly sworn, says that he is and during all the times herein mentioned has been an immigrant inspector in the service of the United States; that he is attached to the Law Department of the Immigration Service of the United States at Ellis Island, New York; that he in his official capacity is authorized to make and in behalf of the respondent hereby makes the following return to the writ of habeas corpus herein.

In compliance with the direction of this Court, the body of the said alien in his own proper person is produced herewith before this Court at the time specified in the writ.

It is respectfully urged that upon its face the petition upon which the writ was granted is insufficient in law, and that the writ should therefore be quashed because

(*a*) The petition does not allege facts to show that the proceedings of the Department of Labor upon which was issued the warrant of deportation pursuant to which the said alien is held, were not regular, fair and in compliance with the statute applicable in
9 such cases, nor facts from which this Court can determine that the proceedings were either irregular, unfair or not in compliance with said statute:

(*b*) The petition does not allege any facts which entitled this Court to review the findings and conclusion of the Department of Labor upon which the warrant of deportation was issued;

(*c*) It is not alleged that there was no evidence before the Department of Labor upon which is based or could have based its findings and conclusion in accordance with which the warrant of deportation was issued;

(*d*) It does not appear by allegations of facts that the issues sought by the petition now to be litigated in this Court have not already been determined by the Department of Labor adversely to the said alien in proceedings which were regular, fair and in compliance with the statute applicable thereto.

As appears by the records of the Department of Labor of the United States with respect to the above named alien, copies of which are produced and filed herewith as part of this return:

(1) This case begins with the transcript of the hearing given the alien herein by J. S. Apelman, a Special Agent of the Department of Justice. At this hearing, the alien, under oath, stated that he was born in 1886 in Grodno, Poland, formerly Russia; that he arrived in New York in 1911 or 1912. The alien made a signed statement before a representative of the Department of Justice to the effect that he arrived in the United States in 1911 or 1912; that he had been a member of the Professional Union for about eight months paying due of 25¢ a month and in 1919 was a member of the Union of Russian Workers, Branch 3, Detroit, which organization has in the past been considered an anarchistic one, and was to a great extent broken up by the deportation of many of
10 its leaders during the latter part of 1919. It also appears that the alien was, during 1919, a delegate from a branch of this organization to the Soviet of Workers Deputies and it has been established that he believes in the doctrines and principles of the Union of Russian Workers. The alien on or about the same time made a similar statement to the Immigration Inspector at Detroit and corroborated what had been told to the representative of the Department of Justice. In this statement, which is marked Exhibit "E" and which has been made part of the record, it appears that he admitted that he disbelieves in Government; is opposed to

law; that the American Government should receive the same treatment as the Czar's; and that the proper way to bring this about is in armed revolution and in the killing of Government officials.

These facts having been duly transmitted to him, the Assistant Secretary of Labor issued a warrant for the alien's arrest under date of September 6, 1921, it being alleged that he writes, publishes, or causes to be written or published, or knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or knowingly had in his possession for the purpose of circulation, distribution, publication, or display, written or printed matter, advising, advocating, or teaching the overthrow by force or violence of the Government of the United States or of all forms of law; that he is an alien anarchist; that he believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States or of all forms of law; and that he writes, publishes, or causes to be written or published, or who knowingly circulates, distributes, prints, or displays or knowingly causes to be circulated, distributed,
11 printed, published, or displayed, or who knowingly had in his possession for the purpose of circulation, distribution, publication or display, written or printed matter, advising, advocating, or teaching opposition to all organized government. During the course of the hearing the alien was additionally charged as follows: "With being an alien who believes in, advises, advocates or teaches the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character, and that he is a member of or affiliated with an organization, association, society or group that advises, advocates, or teaches opposition to all organized Government, or that advocates, advises, or teaches the overthrow by force or violence of the Government of the United States or of all forms of law."

(3) The alien was subsequently accorded a hearing before an Imigration Inspector at which time he admitted substantially all the statements previously made to the Government's representative, waiving his right of counsel. One Hyman Seid testified that he, on an order written on two postal cards which his wife received from two boys, delivered at 11569 Nagel Street, Hamtramck (the alien's home address) three bundles from the office of the American Express Company. The testimony of this witness is corroborated by the testimony of Special Agents of the Department of Justice who were aware of the receipt of this shipment by this alien. They further testified that Mrs. Mansevich, the wife of the accused, admitted to them that on the night prior to delivery of this literature certain men were at her house and made the arrangements
12 relative to the removal of this literature. The alien himself testified that he believed in Government officials in so far as they held positions as teachers but disbelieved in those who believed in arrest and oppression and believed that they should be overthrown and assassinated.

(4) On September 20, 1921, the Department directed the deportation of the alien it having been found "that he knowingly had in his possession for the purpose of distribution printed matter advocating the overthrow by force or violence of the Government of the United States or of all forms of law and printed matter advocating opposition to all organized Government; that he is an alien anarchist; that he advocates the overthrow by force or violence of the Government of the United States or of all forms of law; that he believes in the necessity or propriety of the unlawful killing of officers of the Government of the United States; that he is a member of an organization that advocates opposition to all organized government, and an organization that advocates the overthrow by force or violence of the Government of the United States or of all forms of law."

(5) As the result of many protests to the effect that the alien did not have a fair hearing, deportation was stayed and a further hearing was had on February 18, 1922, at Detroit, at which time the alien was represented by counsel. The witness Seid testified practically the same as he did at the first hearing and his testimony was not shaken by cross-examination. Special Agent Wilcox of the Department of Justice testified regarding the delivery of the three bundles of literature, the contents of which were copies of the anarchistic magazine "Volna" issue No. 18, a paper which is debarred from the United States mails. A copy of this paper is in-
13 corporated in and made part of the record being marked Exhibit "D", an excerpt from which reads as follows: "Taking part in the every day fight of the laborer we will be able to direct the fight to a general strike in one place, or in the whole country, or in the world and we will be able to prepare our comrades to the thought of the inevitable of the armed fight between the strikers and the employers' hired help called the army, police, militia and secret service or in other words to direct the strike to enter upon the road of revolution. From the knowledge of the revolutionized strikers and from the character and idea of the active minority in their midst, it will depend whether the general strike will turn into the road of social revolution or it will be stuck in the fight of the political parties for their own power." There is further testimony of one Mike Slaszek to the effect that he purchased at the home of the Masses a copy of the magazine "Volna" No. 17, and that this alien sold same to him during May, 1921. An excerpt from this issue is quoted as follows: "Anarchism means peace and happiness for all. Anarchists with pleasure would renounce of using force. In the present form force is practised by all, and we recommend the oppressed to use force against force and only against force as a necessary medium of defense."

There appears to be no question as to the anarchistic nature of the paper and of the alien's beliefs as shown by the following answers to questions propounded by his attorney:

"Q. Do you believe all that Volna says?

A. I believe it, but I don't perform it. I believe in what is written in it.

Q. You believe in what Volna says?
A. I believe in what Volna says, but I don't take any notice and don't want to do it."

Exhibit "E" is a paper written in Russian and purports to be a certificate certifying that the alien was a delegate in the Soviet of Workingmen's Deputies in the City of Detroit from the
14 Union of Russian Laborers, No. 3, Highland Park, Michigan.

There is also incorporated in the record documentary evidence showing the anarchistic nature of the Union of Russian Workers and its agreement with the Canadian branch of the organization, as well as the twenty page Manifesto containing a discussion of the evils of the authority of the State and Capitalistic Society and that the principal work of the organization is in the destruction of the State.

In defense of the Government charges the alien denied at the last hearing that he was or had been a member of the Union of Russian Workers or of the Professional Union and also denied that he had "Volna" sent to him for distribution, that he only distributed a few copies to his comrades and that a man with whom he had become acquainted had ordered the delivery of the parcels. It is significant, however, that no effort has apparently been made either by the alien or his attorney to introduce the testimony of this alleged friend and it would appear, therefore, that the explanation is one which was given to suit the occasion.

(6) The entire record was again reviewed by the Department, who, under date of April 11, again directed the alien's deportation under the outstanding warrant which issued September 30, 1921, the Department having found that the alien:

"Knowingly had in his possession for the purpose of distribution printed matter advocating the overthrow by force or violence of the Government of the United States or of all forms of law, and printed matter advocating opposition to all organized government; that he is an alien anarchist; that he advocates the overthrow by force or violence of the Government of the United States or of all forms of law; that he believes in the necessity or propriety of the unlawful killing of officers of the Government of the United States; that he is a member of an organization that advocates opposition to all organized Government, and an organization that advocates the
15 overthrow by force or violence of the Government of the United States or of all forms of law."

(7) As appears by the minutes and exhibits aforesaid, the said alien was duly informed and apprised of the charges against him; the said alien was afforded a full, complete and fair hearing by the Department of Labor upon said charges; the said alien was afforded a full, complete and fair opportunity to answer and to submit evidence upon such charges; there was before the Department of Labor evidence to sustain each of said charges; the Department of Labor duly found that the charges were sustained; and said charges were in fact fully sustained by the proofs that were before and were considered by the Department of Labor.

(8) The respondent respectfully denies each and every allegation of the petitioner's complaint marked and numbered "Third," "Seventh," "Eighth," "Ninth," "Tenth," "Eleventh" and "Twelfth."

(9) Respondent respectfully denies any knowledge or information thereof sufficient to form a belief as to the truth of the allegations in the petition herein marked and numbered paragraphs "First," "Second" and "Fourth."

(10) With respect to allegation marked and numbered "Sixth" of the petition herein and answering same, respondent respectfully alleges, denies that the findings were based upon illegal proceedings taken and evidence obtained in violation of the rights to security guaranteed by Articles 4 and 5 of Amendments to the Constitution of the United States and further denies that the alien herein was commanded to answer questions and to be sworn thereafter and that petitioner was not advised that he could not lawfully be compelled to attend and answer and further denies any knowledge or information sufficient to form a belief thereof as to the truth of the re-
16 maining allegations of petition marked and numbered "Sixth," with the exception admits that Rule 22, Sub-division 5 (*a*) is as stated in the petition, with the exception that the last sentence thereof in the following words "if the alien is unable to speak or understand English, an interpreter should be employed where practicable, respondent alleges that said statement does not appear in the Rules as alleged in said petition. With respect to Rule 22, Sub-division 5 (*b*), respondent respectfully admits that said quotation is part of Rule 22, Sub-division 5 (*b*).

(11) Respondent respectfully alleges that the full record was duly forwarded to the Bureau, together with all written arguments submitted by counsel and the recommendations of the examining officer and the officer in charge for determination as to whether or not a deportation warrant should issue.

Wherefore deponent prays that the writ of habeas corpus herein be dismissed and the said alien remanded to the custody of the Commissioner of Immigration at Ellis Island, New York, to be dealt with in accordance with the said warrant of deportation. John M. Lyon.

Sworn to before me this 30th day of June, 1922. (Sgd.) Carl Brecher, Notary Public, Kings County. Clerk's No. 496 Register's No. 3178. N. Y. Clerk's No. 317, Reg's. No. 3340. Commission expires March 30, 1923.

[File endorsement omitted.]

17 Warrant—Deportation of Alien.

United States of America,

Department of Labor,

Washington.

Warrant for Deportation.

No. 88817/106. 55219/16.

To Commissioner of Immigration, Ellis Island, N. Y. H., or to any officer or employee of the U. S. Immigration Service:

Whereas, from proofs submitted to me, after due hearing before Immigrant Inspector Robert W. Gangewere, held at Detroit, Michigan, I have become satisfied that the alien Nicolai Mansevich, alias Nickolay Mansevich, who landed at the Port of New York, N. Y., ex S. S. "Carpathia," on or about the 4th day of April, 1911, has been found in the United States in violation of the Act of October 16, 1918, as amended by the Act of June 5, 1920, to wit:

That he knowingly had in his possession for the purpose of distribution printed matter advocating the overthrow by force or violence of the Government of the United States or of all forms of law, and printed matter advocating opposition to all organized government; that he is an alien anarchist; that he advocates the overthrow by force or violence of the Government of the United States and of all forms of law; that he believes in the necessity or propriety of the unlawful killing of officers of the Government of the United States; that he is a member of an organization that advocates opposition to all organized government, and an organization that advocates the overthrow by force or violence of the Government of the United States or of all forms of law; and may be deported in accordance therewith.

I, E. J. Henning, Assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Poland the country whence he came, at the expense of the appropriation "Expenses of Regulating Immigration, 1922." You are directed to purchase transportation for the alien from New York, N. Y., to his home in Poland, at the lowest available rate, payable from the above-named appropriation. Execution of the warrant will serve
18 to cancel the bond in the case. The alien may be permitted to depart from the United States at his own expense and in this event his departure should be checked by an officer of this service.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 30th day of September, 1921. (S.) E. J. Henning, Assistant Secretary of Labor. J. G. W. Copy. D. H.

19 U. S. Immigration Service.

Detroit, Michigan, February 18th, 1922.

Present: Nicolai Mansevich, alien; Anna Terletsky, Interpreter; Frederick Schopp, and Lazarus Davidow, Attorneys for alien; Joseph S. Apelman and Thomas C. Wilcox, Special Agents, Department of Justice; Witnesses, Robert W. Gangewere, U. S. Immigrant Inspector; Harry Addelson, Stenographer.

(Alien and interpreter duly sworn.)

Q. What is your correct name?
A. Nicolai Mansevich.
Q. Have you used any other name or names at any time?
A. No.
Q. How old are you?
A. 35 years.
Q. When were you born?
A. 1886, second of May.
Q. Where were you born?
A. In Russia.
Q. What place in Russia?
A. Province of Grodno, Village of Tychny.
Q. You are now advised that you have the right to be represented by counsel in this hearing. Do you wish to engage counsel?
A. Yes.
Q. Who is your counsel?
A. Messrs. Diehl & Nelson.
Q. Are these attorneys, Mr. Davidow and Mr. Schopp, counsel for you in this case?
A. Yes, both of them.

(Attorneys Davidow and Schopp questioned by Inspector Gangewere:)

Q. Have you been engaged to represent this alien in this hearing?
A. We have together with Messrs. Diehl & Nelson; all four of us.
Q. Have you filed written notices of your appearance?
A. Yes.
Q. Are you ready to proceed with the hearing at this time, without Attorneys Diehl & Nelson being present?
A. We are able to proceed insofar as the testimony of Mr. Apelman and Mr. Wilcox is concerned or any other evidence that the Government may offer, but insofar as the defense offered by Mr. Mansevich, we are unable to do so in view of the fact that that particular work of the case is being handled by Harry Diehl and Walter Nelson. We are ready to proceed with the preliminary questions such as the manner he came to this country, etc.

Inspector Gangewere to Alien:

Q. Are you married or single?
A. Married.
Q. What is your wife's name and address?
A. Helen Mansevich, 10233 Dequindre St., Detroit, Mich.
Q. Have you any children?
A. I have three children.
Q. Give their names and ages?
A. The oldest, Anna, is 7 years old, the second one, Mary, is 6 years, and Jennie 4 years old.
Q. Where were your children born?
A. All in Detroit.
Q. What is your occupation?
A. I work in a mill.
Q. Of what country are you a citizen?
A. Russia.
Q. The part of Russia which you were born in is now a part of Poland?
A. Yes.
Q. Have you ever declared yourself officially as a citizen of Russia?
A. Yes, I have sent money to Russia, to the Russian Consul.
Q. Before what Consul did you make such declaration?
20 A. I am in America 11 years and I am sending money each year to Russia and have to do it through the Consul.
Q. Did you make a declaration as a citizen of Russia since the Republic of Poland has been established?

Owing to the fact that the Government was not satisfied as to the competency of the interpreter, hearing was adjourned until 10:00 a. m., Tuesday, February 21st, 1922.

21 U. S. Immigration Service.

Detroit, Michigan, February 21st, 1922.

Present: Nicolai Mansevich, alien; Walter M. Nelson, Harry L. Diehl, Frederick Schepp, and Lazarus Davidew, attorneys for alien; Anna Terletsky, Joseph S. Apelman, and Thomas C. Wilcox, Special Agents, Department of Justice; witnesses, Bronislaus Manikeff; interpreter, Mrs. Wm. A. McGraw, Friend of alien; John Borushko, witness for alien; Robert W. Gangewere, U. S. Immigrant Inspector; Harry Addelson, Stenographer.

Hearing Resumed.

(Alien and Interpreter duly sworn.)

Inspector Gangewere to Interpreter:

Q. What is your correct name?
A. Bronislaus Manikeff.

Q. Where were you born?
A. Warsaw, Poland.
Q. How long have you been in the United States?
A. Since 1913, about 9 years now.
Q. Do you speak and understand the Russion language?
A. I do.
Q. What is the extent of your education?
A. I have a college education in Russian.
Q. What is your position?
A. Manager, foreign exchange department in a bank.
Q. Have you ever seen this alien before us, Mr. Mansevich?
A. No, I never have.
Q. Have you in any way interested yourself in this case at any time?
A. No sir.

Attorney Nelson to Interpreter:

Q. Where do you live in Detroit?
A. 3521 Seminole Avenue, Detroit, Michigan.
Q. Which bank are you connected with?
A. Citizens Bank, Hamtramck, Mich.
Q. Do you know anything about what this man is charged with?
A. I read the article last Sunday in the Detroit News.
Q. That is all you know about the case?
A. Yes.
Q. You don't start this case with any bias for or against the alien?
A. No sir.
Q. Your own personal views as to whether the alien is guilty or innocent, you wouldn't inject in this case?
A. Absolutely not.
Q. Where did you learn English?
A. In the United States.
Q. How long have you been here?
A. 9 years.
Q. Do you talk Polish or Russian?
A. Polish and Russian, both languages. Polish is my mother language. Russian is my educational language.
Q. How many years did you attend Russian schools?
A. Altogether sixteen years.
Q. Do you both write and read both Russian and Polish?
A. Yes sir.
Q. Do you both write and read English?
A. Yes sir.
Q. How did you pick up English?
A. I went to evening high school in New York, preparing myself for law college over here.
Q. Did you go to law school?
A. Not yet, no.
Q. You read all of the text books in the high school?

A. I took a course in the evening high school in New York in the English language.

Q. Who asked you to interpret in this case?

A. I got a telephone call from Mr. Apelman of the Department of Justice.

Q. How long do you know Mr. Apelman?

A. About five years.

Q. You know him intimately?

A. I don't chum with him. I met Mr. Apelman in the Immigration Department a few years ago.

Q. Do you understand that there was a question as to whether Mr. Mansevich's Russian had been properly interpreted?

A. I understand that they wanted a new interpreter and that is why they engaged me.

Q. Have you ever talked with Mr. Mansevich?

A. I never did.

Q. So that you don't know whether he has any peculiarity of dialect?

A. No.

Q. If there is some peculiarity in dialect that you discover and find that you have some difficulty in interpreting, you will let us know?

A. Yes, but I speak several Russian dialects besides the true literary Russian dialect.

22 Inspector Gangewere to Alien:

Q. Did you at any time formally declare yourself as a Russian citizen?

A. Yes, I did. My father was a Russian citizen too.

Q. How did you make such declaration?

A. I had a Russian Passport.

Q. When did you get this Russian Passport?

A. When I left Russia.

Q. When and where did you last enter the United States?

A. In New York, in 1911.

Q. Have you lived in the United States continuously since that date?

A. Yes sir.

Q. How long has your wife been in the United States?

A. 9 years. She arrived in 1914.

Q. Did you live in the United States before 1911 at any time?

A. No.

Q. Have you taken out citizenship papers in the United States?

A. Yes, I have.

Q. What papers have you taken out?

A. First papers.

Q. Did you make a statement before Agent Joseph Apelman of the Department of *the Department of* Justice, September 3rd, 1921?

A. Yes, he questioned me.

Q. I show you this statement and ask you whether that signature thereon is your signature?
A. Yes, it is my signature.

Inspector Gangwere: The Interpreter will now read and translate to you this statement.
(Interpreter reads and translates statement to alien.)
Inspector Gangewere: I shall introduce this statement, signed by the alien, as evidence in this case, the same marked Exhibit "B", the warrant of arrest being Exhibit "A".

Q. To what organizations have you belonged?
A. In 1919, I belonged to the Russian Cooperative Automobile School.
Q. To what organization did you belong at the time of your arrest?
A. I did not belong to any organization, but I was a member of the children's school.
Q. Did you belong to the Professional Union at the time of your arrest?
A. No.
Q. Did you belong to the Union of Russian workers at any time?
A. No.
Q. Have you seen this paper titled Volna at any time?
A. Yes, I did.
Q. Are you a reader of this paper?
A. I have read the paper, but have never taken any notice of its contents.
Q. How many issues of this paper have you read?
A. A few numbers.
Q. Do you believe in organized government?
A. I do.
Q. Do you believe in the kind of Government in force at the present time in the United States?
A. I do.
Q. Is the Government of the United States in your opinion a capitalistic government?
A. Self-understood.
Q. Do you advocate a change in the form of Government in the United States?
A. I am powerless and it is not my business.
Q. Do you believe and advocate that the Government of the United States should be overthrown?
A. That is up to the Americans.
Q. Do you believe in using force and violence in overthrowing the government of a country?
A. I am against arms.
Q. Do you believe in law of any kind?
A. Law that is made by the people I am for it because I got to go by the society.

HYMAN SEID, duly sworn, introduced as witness by the Government.

(Inspector Gengewere to witness:)

Q. What is your name?
A. Hyman Seid.
Q. Where do you live?
A. 9629 Cameron Avenue, Detroit, Mich.
Q. How long have you been in the United States?
A. Ever since 1902.
Q. What is your business?
A. Cartage business.
Q. Did you deliver any express matter to 11569 Nagle St., Hamtramck, on or about Sept. 2nd, 1921?
A. Yes sir.
Q. What was the nature of this matter that you delivered to this address?
A. It was three bundles of paper wrapped up with wrapping paper.
Q. Where did you get these bundles?
A. I am always standing on Westminister with my truck. My wife sent my boy to me and she also sent two postal cards with a square piece of paper with the address where these should be delivered. So I took the postal cards and went down to the
23 American Express Company and I paid whatever the charges was to the American Express Company and they refused to give it to me that time because there was no written order on the post card from the person who sends for it. They sent me back to get it. In order to save that trip so I asked the man I will give him the address of my residence and also I gave my business card so he gave it to me. I paid the charges and they gave me the bundles and I took them right down to the above address. I don't exactly remember the number, but the officer got the address anyhow.
Q. Who gave this order to deliver these express packages, if you know?
A. I wasn't in the house at the time, but my wife told me there was two young men came over, about 24 or 25 years old, and gave the order to her.
Q. When you came to this address on Nagle Street, what did you do?
A. I stopped my truck right in front of the house and asked if they expected anything from the American Express. I found a woman there. I didn't see any man. She said "yes, what have you got" and I told her "I got three bundles." So she said "Take them up stairs." Upstairs there was some kind of a garret. I asked her to give me a bag so I could take all three at once, not wanting to make three trips, but after I found it was too heavy, so I took one single bundle up in the bag and carried it up. Then I went down to get the other bundles and the two officers stopped me and asked me where I took the bundle.

Q. How many bundles did you take up?
A. One.
Q. Did you take it up in a bag?
A. Yes sir.
Q. Is this the slip that was in between the postal cards?
A. Yes this is the slip they gave me. (Slip later introduced as Exhibit C.)

(Attorney Nelson to the witness:)

Q. Did you see Mansevich, the alien, at that time?
A. No.
Q. Did you see him before you came to this room?
A. The first time I seen him was when they took him out of the Ford Motor Company.
Q. Then you don't know who received these papers or anything of the kind?
A. I brought it up to the house.
Q. He wasn't there?
A. No sir.
Q. You don't know him as an acquaintance or anything of that kind?
A. No sir.
Q. You know the woman?
A. No sir.
Q. Know her name?
A. I showed her the paper and asked he- if this was her name and she said yes.
Q. She said that was the address?
A. Yes.
Q. Did you see any man around the house?
A. No sir.
Q. Just this woman?
A. Yes.
Q. Any children?
A. I don't remember.
Q. You don't remember any children?
A. I do not. Probably there was children and probably not, but I don't remember.
Q. How did you see Mansevich when they took him out of the Ford Motor Co.?
A. The officer went up there and took the bundle down and put it back in my truck and asked the woman where her husband works and she told him he works at the Fort Motor Co. so the officer told me to drive to the Ford Motor Co.
Q. The officer went in and got Mansevich?
A. I don't know his name, but they took one man out.
Q. Who were the officers?
A. This man, over here (Indicating Special Agent Wilcox).
Q. Was Mr. Apelman there?
A. No sir.

Q. Was there another man there?
A. Yes sir.
Q. Bigger or smaller?
A. Smaller, a blond headed man.
Q. Did you know what was in those packages?
A. The first time I asked the officers and except for what they told me, I did not know what was there.
Q. Did the officers show you anything?
A. They showed me their badge.
Q. Did they show you any writ or paper that gave them under the Court's seal and name the right to search your wagon or this house?
24 A. They didn't show me anything, just the badge. They told me they were officers and I asked them what was wrong. The bundles were not very good wrapped. They were torn some part of the wrappers. So I didn't see anything wrong. I couldn't read the language it was written in so I didn't look on them. He said "Never mind, we are going to cut out the whiskey business."
Q. Did you see the officers talk to the woman?
A. Yes.
Q. Were they close enough so you could hear what was said?
A. Yes.
Q. Did they show her any paper or anything more than their badge?
A. I don't remember whether they had any papers, but they showed the badge.
Q. Did you see them take out of their pocket any paper or anything else?
A. I don't remember.
Q. You saw them talk with the woman?
A. Yes.
Q. Did they take out a paper and say "Here Madam, here's a paper?
A. Maybe they did and maybe they didn't. I don't remember.

THOMAS C. WILCOX, duly sworn, testified as follows:

Inspector Gangewere to witness:

Q. What is your name?
A. Thomas C. Wilcox.
Q. Your position or calling?
A. Special Agent, Bureau of Investigation, U. S. Department of Justice, Detroit, Michigan.
Q. Did you, on September 2nd, 1921, go to 11539 Nagle Avenue, Hamtramck?
A. I did.
Q. What was your reason for going there?
A. Shortly after one o'clock, on September 2nd, 1921, I drove with my automobile accompanied by Mr. Barkey, who was then connected with the Department as Agent in Charge at Detroit. We

drove in the rear of an automobile truck operated by the gentlemen just on the witness stand, Mr. Seid, I believe his name is. We saw him receive three bundles of literature at the American Express Company's offices. When he left those offices I followed him, driving my automobile. He drove in a round about way through many highways and byways and alleys, etc., until he finally stopped in front of 11569 Nagle Street, Hamtramck. When he stopped I passed him and stopped ahead of him up the road a slight distance in such a position that I could see what he was doing. He left his truck and entered the house at 11569 Nagle, was in but a few minutes and he came out carrying a gunney sack over one arm. He placed one of the bundles that was on this truck in the gunney sack, took it over his shoulder and took it in the house. By the time he returned and came out of the house, I stood at the front gate. He was carrying the gunney sack over his arm. It was empty at that time. I asked him what he delivered in there. He said he didn't know; some bundles of papers. I said to him "You are one of these fellows that is carting around these books, distributing them among the foreigners, teaching them how to make whiskey." I at that time knew what was in the bundles. He said "I don't know anything about that." He said "There are the bundles on my truck. Take them if you want them." All I know is, I was given a card to get them from the express office and was given this slip of paper (Exhibit C) showing me where to deliver them." He handed me that piece of paper with that address on it and the name of Mansevich. Mr. Barkey was with me. Mr. Barkey remained at the front gate with Mr. Seid right on the side walk between the sidewalk and the truck. In the meantime I asked Seed or Seid where he delivered the bundle, and he said in the attic. I asked him who told him to put it in there and he said the woman in the house. I then went to the rear of the house and rapped on the door. A lady came to the door; I asked her her name. She told me Mansevich. I informed her who I was, my name and my identity. I asked her if a bundle of printed material had been delivered there and she said it had. I asked her where it was and she said upstairs and pointed up the stairway. I said to her "what are you getting these books in here for, they teach foreigners how to make whiskey." She laughed and shrugged her shoulders and said "Oh, you foolish." "They no whiskey books." I asked her where the bundle was and she said "up stairs, you take it if you want it." I went up stairs. At the top of the stairway I found a door leading into an attic. This was an ordinary attic. Room enough for an adult person to walk around considerably. As I entered the attic there was one trunk setting inside the attic and to the left of the doorway and a few feet inside the door. Behind this trunk was the bundle that the expressman had just delivered. I noticed the bundle and looked around the room. Walked to the front end of the room and looked it over. At the other end of the room, opposite the door, which is the only entrance, was a chair and a little sort of a speaker's stand made of a cracker box or something along that order. Grouped

about this chair in a semi-circle were a number of other chairs making the place appear to me as a place prepared for a meeting and speaker of some kind, and it had the appearance that it had been used for that purpose in the past. Aside from one or two pieces of broken chairs on the right hand side of the door, there was no other furniture than what I have enumerated in that attic. I took possession of the bundle of the anarchistic magazine Volna, one of which is right here before me on this Inspector's table and took it down and put it in my automobile. The expressman turned over the two bundles he had. When I came down stairs with the bundle I stopped and talked to the lady who said she was Mrs. Mansevich. I enquired her husband's correct name and she told me. She told me where he was employed. Mr. Barkey and Mr. Seid were in the front of the building at the gate. Mrs. Mansevich told me her husband was employed at the Ford Motor Co. I took the bundle and proceeded to the front of the building around the side of the house in the yard and Mr. Barkey — out there and I told her what Mrs. Mansevich had told me when I came down the stairs with the bundles with reference to the place of employment of her husband. Mr. Barkey instructed me to proceed to the Ford Motor Co. to take Mansevich into custody. I got on to the truck with Mr. Seid and rode to Manchester Avenue, opposite to the Ford Company plant. I went into the office and had one of the officer- of the Ford Company send out or go out himself and bring Mansevich to the office. When Mansevich arrived I questioned him as to his identity as to the place where he lived, describing the house to him etc., to make sure that he was the right man who lived at 11569 Nagle St. I was satisfied that he was, I told him who I was and showed him who I was and told him that he would have to go with me for investigation. He got into my automobile with me and together we came to the office of the Bureau at 301 Owen Building, Mr. Barkey riding down there with Mr. Seid on his truck. When I arrived at the office of the Bureau I turned over Nicolai Mansevich to Mr. Apelman. I also turned over the three bundles of these magazines to Mr. Apelman and together we opened the three bundles and found that all of the bundles contained copies of the anarchist magazine Volna, issue #18, a paper and magazine debarred from the mails of the United States.

Q. Is this a copy of the magazine that was in those packages?

A. Yes sir.

Q. Did you question Mr. Mansevich at any time regarding using his attic for a meeting place?

A. I did.

Q. What did he say?

A. He claimed that he had just carried those chairs to the attic the night before, as I remember, preparatory to a meeting that one of his boarders wanted to hold or was arranging for. He told me something along those lines.

Q. Did you see any other furniture outside of these chairs and this trunk in this attic?

A. Aside from the trunk which I have enumerated and the one chair at the end of the attic, the semi circle of chairs grouped about

that chair and one or two broken pieces of chair, there was no other furniture in that attic the day I was there.

Q. Did Mr. Mansevich say anything to you as to how these three bundles came to be delivered to his address?

A. As I recall it, he said a man that had boarded there had the bundles delivered there and he expected they were for this man; something along this line, I don't remember the exact wording he gave.

Inspector Gangewere: I shall introduce this slip of paper which was handed to Mr. Seid containing the Mansevich address, as Exhibit C.

26 Attorney Nelson to Witness Wilcox:

Q. Do you know anything about the handwriting on Exhibit C, Mr. Wilcox?

A. I do not.

Q. On this, in addition to the designation "C", which indicates the Exhibit number there is in pencil down at the bottom C2486 and after Mr. the word Nick over a carat?

A. I put it in there.

Q. Then the other part of this writing in a kind of a bluish ink, 11569 Nagle St., Hamtramck, is in one handwriting and then Mr. Mansevich in another handwriting?

A. It is all in one handwriting. I made a test of that to prove it. It is one handwriting written in ink.

Q. You don't know whose handwriting that is in ink?

A. I do not.

Q. You don't claim that it is the ha-dwriting of this alien?

A. I don't.

Q. Nor the handwriting of his wife?

A. Never having seen his wife's signature I would not be able to answer this question.

Q. Mr. Seid gave it to you?

A. Yes sir.

Q. Did you know before this shipment reached the American Express Company's office that it was there?

A. I did.

Q. And it had been there, how long?

A. I don't know anything about that. I knew it was there ten minutes before we got there.

Q. Immediately after learning it was there, you went to the Express Company's office?

A. Shortly thereafter. We expected somebody would call for it and drove up there and sat there in the car waiting to see if anybody called.

Q. How long did you wait?

A. I wouldn't be able to tell you that. I made no record of how long.

Q. Well some recollection, whatever it is?

A. I don't know how long it was before the packages were delivered. We pulled up there and saw a truck standing side of the American Express Company, that is, there were two or three automobiles and a truck lined up there along the curb. We pulled up in the rear of them and sat there in the car. After a matter of ten minutes or longer, something like a quarter of an hour, a truck wheeled up coming up from the office across the side walk and the three bundles were thrown onto the truck. I did not know at that time whose truck it was or anything of that kind, having never seen it before.

Q. Were these packages prepaid?

A. Seid told me he paid the express charges.

Q. You never saw or heard tell of his getting that money back?

A. He never got it in my presence.

Q. You don't know whether Mr. Mansevich paid him or not?

A. I do not know whether he was paid before he went after the bundles or was paid by Mrs. Mansevich when he delivered the first bundle, or whether he has since been paid by any person or organization. I don't know anything about his being paid.

Q. How does the American Express Company learn of these shipments?

A. I couldn't tell you.

Q. How did you know this shipment was there?

A. I was advised by a confidential officer of the U. S. Government.

Q. How were these packages wrapped?

A. In wrapping paper. What they call "tough stuff" wrapping paper tied around with a cord.

Q. What was there on the outside to indicate what was in this package?

A. The point of shipment showed what was in the paper.

Q. What was that?

A. New York.

Q. No street address or building?

A. I believe there was.

Q. A New York street address?

A. I believe so. I am not positive.

Q. Was that the address of the place of publication of the Volna?

A. There is only a few people that *no* the exact location of the publishing plant of the magazine Volna. It is published in many locations all over the country.

Q. The package had on it the address of destination, where it was going to?

A. It had an address on it.

Q. The wrapping had either been torn or broken?

A. I did not notice it.

Q. How did you find out the contents?

A. I knew it.

27 Q. How did you know it?

A. Knowledge gained by confi-ential agents of the Government.

Q. Did you have a search warrant for searching this pac-age?

A. I did not need a search warrant. I did not seize or search anything.

Q. Did you have a warrant for searching the house at 11569 Nagle St.?

A. I didn't search the house.

Q. You went into the house?

A. I did not. I went into the attic.

Q. It was in the attic you found this package?

A. Yes.

Q. Did you have any warrant for searching the truck of this man Seid?

A. I did not need it.

Q. Did Mr. Barkey have a warrant for any of these things?

A. I don't know. He may have had.

Q. Did you at any time see any warrant in Mr. Barkey's possession in connection with these matters?

A. I did not see one. There was no need for any.

Q. Did you have a search warrant?

A. I told you that I did not. There was no search made at any place; consequently no search warrant was needed.

Q. You have told us I think in detail about what occurred?

A. I tried very hard to give you the truth of everything exactly as it occurred.

Q. You have given it to us in detail?

A. I tried to tell you everything I think you wanted to know.

Q. You have related to us everything of importance that occurred in this transaction so far as you personally know?

A. So far as I have been asked I have answered.

Q. There is nothing more that occurs to you that you would care to tell us about?

A. Yes, there is. In connection with this search warrant.

Q. Did either you or Mr. Barkey have a search warrant or use it in this case?

A. I demand my rights to make an explanation regarding the search warrant. I have told you that I did not have one. If Mr. Barkey had one, I do not know. I am the only man that went into the house.

Q. If Mr. Barkey did have one, you didn't see him use it any time?

A. No, I did not. In qualifying that, I want to say, that at no time, during any of the proceedure, did Mr. Barkey or I search the truck of Hyman Seid, nor did we, either of us, at any time search any part or portion of the residence located at 11569 Nagle St. I entered the upper floor of this house at the invitation of the woman who said she was Mrs. Mansevich, who informed me that I could go up, could look around as much as I wanted to and told me I could take the bundle just delivered if I so desired. Consequently I did not serve a search warrant on Mr. Mansevich.

Q. You did say, Mr. Wilcox that this issue, #18, of Volna is one of those that were in that package?

A. Yes sir.

Q. How did you get into that package to get this magazine?

A. After the bundles were brought to our office by myself, we opened them up and counted how many there were, took out samples for evidence, one of which is the one appearing on this desk here.

Q. You and Mr. Apelman and Mr. Barkey opened all three of the packages?

A. I think I opened all of the bundles myself. I knew the bundles contained an anarchist magazine forbidden in the United States mail under instruction.

Q. Can you read anything on this magazine?

A. Yes sir.

Q. In other words you knew that this was Volna?

A. Yes sir, I did.

Q. How do you know that?

A. Handling so many thousands of them.

Q. Somebody told you?

A. Nobody told me. Many people have told me and I know the Russian word "Volna" in Russian.

Q. What does it mean?

A. It means what it says "Wolna."

Q. It starts with BO, then a Russian letter, then HA?

A. Yes sir.

Inspector Gangewere: I shall introduce No. 18, Volna, as evidence in this case, the same to be marked Exhibit D. The interpreter will translate part of the contents of this magazine on page 14, the same to be read into the record.

Interpreter Translates: "Taking part in the every day fight of the laborer we will be able to direct the fight to a general strike in one place, or in the whole country, or in the world and we will be able to prepare our comrades to the thought of the inevitable of
28 the armed fight between the strikers and the employers' hired help called the army, police, militia and secret service or in other words to direct the strike to enter upon the road of revolution. From the knowledge of the revolutionized strikers and from the character and idea of the active minority in their midst, it will depend whether the general strike will turn into the road of social revolution or it will be stuck in the fight of the political parties for their own power."

Recess had until three p. m., February 21st, 1922, when hearing was resumed, all parties being present at that time that were present in the morning.

Inspector Gangewere to alien:

Q. Did you live at 11569 Nagle St., Hamtramck, on September 2nd, 1921?

A. Yes.

Q. Did anyone else live with you besides your family at this address?

A. No.
Q. Did you write this address and that name on the slip of paper marked Exhibit "C"?
A. Yes.
Q. Did you send this slip to a drayman, Mr. Seid, who was here this morning to testify?
A. No.
Q. Do you know who sent this slip to drayman Mr. Seid?
A. I do not.
Q. Did you make a statement before me on September 3rd, 1921?
A. Yes, sir. I seen you inspector. Yes, you did ask me questions.

(Inspector translates above statement to alien.)

Inspector Gangewere: I shall introduce this statement as evidence in this case the same to be marked Exhibit "E."

Q. Did you ever see this paper before?
A. Mr. Apelman showed that to me three times.
Q. Is this name appearing on the side your signature?
A. Yes, it is my signature.

(Interpreter translates above paper in English, the same being written in Russian.)

Mandate.

This mandate given to Comrade Mansevich to certify that he is a delegate in the Soviet of Workingmen's Deputies in the City of Detroit from the Union of Russian Laborers, #3, Highland Park, Michigan. To this effect it is certified with the signature and with the seal attached. (Sgd.) Kudriaczk. (Seal Union of Russian Workers, Highland Park, Mich.)

Inspector Gangewere: I shall introduce this mandate as evidence in this case marked Exhibit "F."

JOSEPH S. APELMAN, duly sworn, testified as follows:

Q. What is your name?
A. J. S. Apelman.
Q. What is your business or calling?
A. Special Agent Department of Justice.
Q. How long have you filled this position?
A. Almost four years.
Q. Did you, at any time, come in contact with the alien before us, Mr. Mansevich?
A. Yes.
Q. When did you first meet this alien?
A. On September 2nd, 1921, when he was brought to our office by Mr. Wilcox and Mr. Barkey for investigation.
Q. Did you question him at that time?

A. I questioned him on that day and the following day.

Q. Did this alien make a statement before you and swear to same on September 3rd, 1921?

A. Yes sir.

Q. Did he sign this statement?

A. Yes, he did.

Q. Is this the statement, Exhibit B, which I show you?

A. Yes, that is his signature and that is my signature.

29 Q. In what language was the alien questioned at that time?

A. In English and in Russian.

Q. Do you understand and speak the Russian language?

A. Yes, I do.

Q. Was the alien made fully acquainted with every question and answer in this statement before he signed it?

A. Yes, we always make it our business to make acquainted every person who signs a statement in our offices with the contents of the statement.

Q. Did he at that time state to you that he was a member of the Professional Union?

A. The statement would answer this question. Whatever is contained in the statement is his answer to my questions.

Q. Was the alien advised at that time that he had the right to be represented by counsel?

A. Yes sir.

Q. What answer did he make?

A. He said that all lawyers were crooks, thieves and other words which I cannot repeat here on account of ladies being present. He used the Russian word "Svolech."

Q. Were you present on September 3rd, 1921, when I questioned this alien?

A. I was.

—. Did you interpret for me at that time?

A. I did.

Q. Were all of the answers that you gave me at that time the true answers of Mr. Mansewich?

A. Yes sir, to the best of my ability.

Q. Do you recognize this as being the statement taken at that time?

A. Yes, I recognized it from what the interpreter interpreted to the alien this morning. I recognized that they were the identical answers of his.

Q. Do you remember asking the alien the following question on September 3rd, 1921: "Do you believe in killing Government officers to remove them from office."

A. Yes, I do.

Q. Do you remember what answer the alien made?

A. Yes sir, I do.

Q. What answer did he make?

A. He answered in the affirmative "Yes."

Q. Were you present on September 12th, 1921, when I again asked this alien whether he believed in the assassination of Government officers?

A. I don't recall the date. If you mean the hearing here in this office, I remember that. I think it was about a week or so later after he was at our office.

Q. Do you remember what he said at that time?

A. I cannot remember everything that was said. A record was taken by a stenographer.

Q. Do you remember whether or not the alien denied that he made the statement that he believed in the assassination of Government officers?

A. He repeated that again through an interpreter and mentioned some particular officers who should be killed, pointing at Mr. Wilcox.

Q. Have you been engaged in the investigation of radical organization-?

A. Yes sir.

Q. Are you acquainted with the principles and doctrines of the various radical organizations?

A. I am.

Q. How did you make yourself acquainted with the principles and doctrines of the various organizations?

A. During the course of my investigations.

Q. Have you come into possession of any documents belonging to such organizations by which you could judge of their nature?

A. According to an official report from our Department at Washington, the Professional Union is an anarchist organization. Also I have been informed that at the meetings of the Professional Union the publication Volna and other anarchist publications are being distributed.

Q. As far as you know, is the Professional Union the same as the Union of Russian Workers?

A. Yes sir.

Q. From what source did you get this information?

A. From our Department in Washington.

Q. Are you acquainted with the principles and doctrines of the Union of Russian Workers?

A. I am.

Q. Is the Union of Russian Workers an Anarchist organization?

A. Its constitution calls for the overthrow of the United States Government by force.

Q. Is then the Professional Union an anarchist organization?

A. Yes sir.

Q. Are you acquainted with the publication Volna?

A. Yes sir, I am.

Q. Is this paper published openly?

A. No, secretly.

Q. Have you been reading the different numbers of this publication?

A. Yes sir.

30 Q. From what you have learned in reading these different numbers, to your knowledge, what kind of a paper is this?

A. From my investigation I find that it is an out and out anarchistic publication and the front page of each issue of that paper indicates that it is the organ of the Federation of the Anarchist Communist Group.

Q. Did you ever see this paper, marked Exhibit F before?

A. Yes sir, I have.

Q. Will you explain how you came to see this paper before?

A. This paper was turned over by the Police some time in 1919 and was kept on file in our office up to the date of the arrest of this alien.

Q. Do you know where this paper was secured?

A. From the Secretary of the Soviet of the Workers Deputies.

Q. How do you know that this paper was taken from the records of the Soviet of Russian Workers?

A. We had in our custody Michale Ushkevich, former secretary of the Union of Russian Workers and also secretary of the Soviet of Workers Deputies and he was later deported. During an investigation he identified this paper as being the official mandate issued to the man who appears thereon authorizing that man Mansevich to represent Branch #3 of the Union of Russian Workers, Highland Park, Michigan, at the meetings of the Soviet of Workers Deputies.

Q. When did this mandate come into your possession?

A. Sometime in 1919, I don't remember the exact date.

Q. When you examined this alien, Mr. Mansevich, before, did he recognize this as being his signature?

A. Yes sir, he did.

Q. Is there anything you wish to add to your testimony?

A. I wish you would read into evidence the constitution of the Union of Russian Workers and a copy of their manifesto.

Inspector Gangewere: I shall introduce as evidence in this case Manifesto of the Anarchists-Communists as Exhibit G, and the Constitution of the Union of Russian Workers as Exhibit H.

Q. Is the publication Volna admitted to the mails?

A. It is not.

Attorney Nelson to Witness Apelman:

Q. How do you know whether or not this publication is admitted to the mails?

A. I know that it does not come through the mails and that it is distributed and not sent through the mail.

Q. Then it is a conclusion?

A. I also have enquired of Inspector Fraser of the Post Office Department and he thought it would be suppressed very much if it did appear in the mails.

Q. Did he show you any Departmental order?

A. He did not.

Q. Can every little inspector in the Post Office Department, of his own will, suppress or refuse to carry a publication?

A. That is not for me to decide Mr. Nelson.

Q. Then you don't know whether or not there is a Post Office Departmental Order that is valid denying this paper Volna circulation through the United States Mails?

A. I only know what the Inspector told me.

Q. You don't take the paper yourself, do you Mr. Apelman?

A. No sir, I do not.

Q. But you see a copy of almost every issue?

A. I do.

Q. It still comes out right along?

A. Yes, I saw the last issue about 2 or 3 weeks ago.

Q. It comes out each month?

A. It is a monthly.

Q. Does it come out that often?

A. Yes sir.

Q. How long has it been coming out?

A. About a year.

Q. And your Department has done everything possible it could to suppress this paper?

A. I couldn't give you this information.

Q. You have done all you could to suppress its circulation?

A. I have done all I have been directed to.

Q. How long has it been since you talked to Inspector Fraser?

A. About two or three months ago. I don't remember the exact date.

Q. And you haven't inquired since that time?

A. I have not.

31 Q. Have you got any of the last issue of Volna?

A. Not with me.

Q. Have you seen it?

A. Yes sir.

Q. Is it getting any better as time goes on?

A. I couldn't give you that information.

Q. Do you know where the last issue of Volna was published?

A. I am not at liberty to give you that information.

Q. What is the Secretary of this organization's name?

A. Kuddiaczk.

Q. How long since he was deported?

A. Must be 18 months at least.

Q. This isn't the man you referred to as Secretary in your testimony?

A. No sir, His name was Mike Ushkevich. He also has been deported, about a year and a half ago.

Q. Long before this alien was taken into custody?

A. Yes sir.

Q. You said that this Exhibit "F", this mandate was admitted by Ushkevich to be a mandate to a man by the name of Mansevich?

A. Yes sir.

Q. Was this particular alien, Nicolai Mansevich, present at that time?

A. No sir.

Q. Was this alien Mansevich at any of the statements or hearings that you were present at with reference to Ushkevich?

A. No.

Q. So that whatever Ushkevich said about this mandate was not said in the presence of *of* this alien Mansevich?

A. No sir.

Q. Did Ushkevich in any way identify or describe the alien Mansevich?

A. No sir, only referred to him by name.

Q. You have read this mandate, Exhibit F, does it in any place refer to Nicolai Mansevich?

—. Yes sir, the signature here.

Q. But in the body of the mandate?

A. It just says Mansevich.

Q. It doesn't give a first name at all?

A. No.

Q. You weren't along on this day when Mr. Barkey and Mr. Wilcox went out to this alien's house for a call?

A. No sir.

Q. The first you ever saw of him was in the Owen Building when he was brought over there with this bundle of literature.

Q. Did you talk to Seid at that time, the driver of the truck?

A. Yes sir.

Q. And you talked to Mansevich?

A. Yes sir.

Q. You understand both Russian and English?

A. Yes sir.

Q. You heard the interpreter today?

A. Yes.

Q. Has he so far given a fair interpretation?

A. Yes sir.

Q. Just as fair as could be given?

A. Yes sir, I selected him because Mr. Davidoff at one time used him and I thought he would — all right.

Q. You have heard the questions and answers in Russian and English and they have been fairly interpreted?

A. So far as I have understood.

Q. Haven't any objection down to this point with the interpretation?

A. No sir.

Q. Either with the written or oral matter?

A. No sir.

Q. Were you ever a member of the Union of Russian Workers or of the Professional Union?

A. No sir.

Q. You have seen most of their literature?

A. Yes sir.

Q. Most of it is in Russian?
A. Almost all of it.
Q. Now out of this copy, #18, of Volna, did you have read into this record the worst or most offensive part?
A. I didn't select it.
Q. Weren't you right here when he did it?
A. But I didn't select that portion.
Q. Who did select that portion?
A. I don't know.
Q. Have you read this paper, Exhibit D?
A. I have looked it over, no doubt.
Q. Are these your marks on pages 14 and 15?
A. I did not select that part.
Q. Have you, Mr. Apelman read this #18?
A. Sometime ago I must have looked it over.
Q. Was this section of that paper that was read the worst thing in that paper?
A. I couldn't say, not having selected it.
Q. This paper, Exhibit D, is from page one to 32?
A. Yes sir.
Q. As far as I can tell here, of my knowledge of Russian, all except the last two pages are typewritten matter, either poetry or text or something about their proposition?
A. I would have to read it.
Q. And apparently a financial statement at the end taking a sheet and a half?
32 Q. You don't remember anything worse in that Russian publication that what I have read?
A. I stated before that I did not select that part.
Q. Offhand you don't remember whether there is anything worse than what has been read?
A. I don't remember whether there is anything better or worse.
Q. Did I understand you a while ago to say that a certain organization and certain publication were anarchist or anarchistic?
A. I don't know what you refer to.
Q. You said that the Union of Russian Workers and the Professional Union were anarchist organization-?
A. Yes sir.
Q. And this publication Volna is an anarchist publication?
A. Yes sir.
Q. So that just simply because they say so or their paper says — is why you know it?
A. Because of the character of the paper and their constitution and the manifesto of the organization.
Q. They say they are?
A. They say and advocate anarchism.
Q. What is in there that makes you say that besides the writing on the title page?
A. Their manifesto, their constitution and their publication Volna all advocate the overthrow of the United States Government specific-

ally and of all organized government and the assassination of public officials because of their position.

Q. That is, as you understand it, anarchism?

A. Yes sir.

Q. Do you know whether they advocate the establishment of a different kind of government?

A. They advocate no Government at all.

Q. Does it not advocate that the workers are to form a Government?

A. That is what their paper says.

Q. So that is what you meant when, in Mr. Gangewere's questioning, that this printed matter was anarchistic?

A. Yes sir.

Q. Did you ever attend a meeting of the Professional Union in Detroit?

A. About once.

Q. Was this alien there?

A. I didn't see him there.

Q. How long ago was that?

A. If you refer to the case of William Kravchuk, you could find the exact date. I testified in that case. Mr. Diehl was the attorney in that case.

Q. Give us an idea of how long ago?

A. I really couldn't tell you off hand.

Q. Was it a year age?

A. It was about six or seven months ago. The exact date is in the William Kravchuk case.

Q. What was done at that meeting?

A. Discussions were held.

Q. About what?

A. About their organization affairs, the money spent and the money taken up, and something about their publication.

Q. They looked after their money pretty well. Almost as bad as the capitalists. That took up most of the time?

A. Some letters were read from different parts of the country.

Q. What did they contain, remittances or advice?

A. Advice.

Q. Was the meeting orderly?

A. Yes, orderly, but some of the speakers and people engaged in discussion and referred to themselves as "we anarchists."

Q. Like some people call themselves Christians?

A. Yes.

Q. Do you believe that a man is a Christian if he says so?

A. If I have no proof to the contrary.

Q. Was there any commotion or disorder?

A. I didn't see any. I was there only about a half hour.

Q. How did you get in?

A. The door was open and I walked in and sat in a back seat and they didn't pay any attention to me.

Q. If I had been there, I could have walked in with you?

A. Very likely. Nobody examined you for credentials. The door was open and I went in and sat down.

Q. They went on with their discussion as usual?

A. Yes.

Q. Did you arrest anybody at that time?

A. No sir.

Q. Did they talk about anarchism?

—. They discussed their organization affairs.

Q. Might have been a Board of Directors meeting or anything of that kind as far as the discussion was concerned?

A. Only from the statement of the speakers, who referred to themselves as "we anarchists" can not do so and so and must do so and so.

33 Q. Was there any proposition while you were there to assassinate any public official?

A. No sir.

Q. Or to take any action against any government in the way of force?

A. No sir.

Q. There wasn't any proposition to harm any officer or citizen?

A. No sir.

Q. Now this is the same Union that you claim Mansevich belonged to?

A. He admitted it under oath and I took his word for it.

Q. You think he was a member of it?

A. I believe so.

Q. How far had the meeting progressed when you got there?

A. The meeting was still in progress when I got there and when I left there.

Q. There might have been something worse after you went away?

A. I don't know.

Q. How did you know there was going to be a meeting at that time?

A. I was so informed.

Q. Somebody that — attending the meetings tell you?

A. I don't know whether the man attended or not.

Q. The procedure was in Russian and you understood Russian as it was spoken there?

A. Yes sir.

Q. You are in the Department of Justice engaged in cases mostly of this kind?

A. Any case assigned to me by the Agent in Charge I am handling.

Q. You have special qualifications for handling a case in which a knowledge of Russian and Polish is essential?

A. I don't claim so.

Q. Well, Mr. Wilcox would not get along quite as well as you do?

A. No sir, but there are other men who have even better qualifications.

Q. You mean they know more about these languages than you do?

A. They know more different languages.

Q. Not any more about Russian than you do?

A. I don't know. They might and they might not.

Q. But for the purpose of a case like this you would do as well as any man in the Department and a good deal better than a man like Mr. Wilcox?

A. Yes sir.

Q. In other words you don't handle all of these cases, but a good many of them?

A. It is not up to me but the man in charge assigns the cases.

Q. You don't have any other occupation than working for the Department of Justice?

A. No sir, I don't.

Q. You spend all of your time at it?

A. Yes sir.

Q. And have done so for four years?

A. Mostly four years.

Q. All the time the Mansevich case has been pending your only occupation has been working for the Department of Justice?

A. Yes sir.

Q. And your purpose is to first determine whether a man is subject to deportation and then to complete proceedings so that he will be deported?

A. Deportation is not up to me or to our Department.

Q. It is up to your Department to get the proof?

A. Yes sir.

Q. And you did get it in the Mansevich case?

A. I was not the only one. Mr. Wilcox and Mr. Barkey also were in it.

Q. Didn't you say that you were the only person speaking the Russian language that had anything to do officially with the Mansevich case?

A. No sir.

Q. Who else did?

A. I cannot divulge the names.

Q. Does Mansevich know his name?

A. I don't know whether he does or not.

Q. All of the statements introduced here have been taken through you?

A. Which ones do you refer to.

Q. These two here, already introduced in evidence as Exhibits B and E?

A. In the statement B, Mr. Wilcox was present also. In the statement E, Mr. Gangewere was present.

Q. But you acted as interpreter for both of them?

A. Yes sir.

Q. You are interested in seeing Mansevich deported, aren't you?

A. No sir. If he has violated the law he should be deported, but if he does not come under the provisions of that specific law, I would not like to see him deported.

Q. From what you have seen of Mansevich, he has been courteous, willing and well behaved?

A. No sir.

34 Q. What have you seen to the contrary?

A. At the previous hearing here he pointed at some of the officers and said they should be killed.

Q. I think it was extreme frankness?

A. Yes.

Q. You mean that is as to what he said, but now as to anything he did in your presence?

A. He was not abusive to me. I will say that.

Q. When you told him to do a certain thing, he did it?

A. Yes sir, and at the hearing he got a few cents from me for lunch which he promised to pay back and which he afterwards did pay back.

Q. How much money was that?

A. Fifty cents.

Q. Did he pay it back promptly?

A. Yes sir. After his release on bond.

Q. In your investigation, you haven't heard it said by his neighbors or tradesman that he didn't pay his debts or was quarrelsome or troublesome?

A. I didn't make any inquiries of his neighbors.

Q. At any rate you have heard no complaint of this kind?

A. No sir.

Q. You know that he has a family?

A. He told me so.

Q. A wife and how many children?

A. According to the statement, three children.

Q. That is what he told you?

A. Yes sir.

Q. You are willing to take his word on that?

A. Yes sir.

Q. These children are young?

A. According to the statement they are six, five, and three, something like that.

Q. He was a man of some property?

A. He told me had a house on which he paid $1,000.00.

Q. Wasn't it $1,400.00?

A. As far as I can remember $1,000.00.

Q. Did you find any criminal record against him?

A. No sir.

Q. The only complaint that you have or know anything about is his connection with these organizations?

A. Yes sir, and distributing Volna.

Q. Did you hear any complaint from his employer?

A. No sir.

—. And you have seen the man occasionally since September until now?

A. Perhaps twice.

Q. And he was always when you seen him apparently in good health and able to do a good day's work?

A. His appearance shows that.

Q. You have had prisoners of this kind who were obstrepuous and made more or less trouble?

A. As a rule they do not make any trouble when under investigation in our office.

Q. This man has been as well behaved as anyone?

A. Yes, with the exception of those traits.

Q. About those traits, just which people did he point out for slaughter?

A. He pointed out Mr. Wilcox, saying those two officers which arrested him should be killed. He was a little excited about it.

Q. He felt pretty strong about them taking *them* into custody?

A. Yes sir.

Q. In his statement he also mentioned officials generally?

A. Yes sir.

Q. Did he try to do anything?

A. He didn't try. What could he do.

Q. He didn't have any arms or ability to do anything to Wilcox?

A. As to ability, I do not know.

Q. He didn't have any bomb, or gun, or club, or even a knife?

A. Not in sight.

Q. And no attempt was made to do anything?

A. No sir.

Q. Every time you have asked him to come down to your office, or to this office, he came down promptly?

A. He never was asked to come down to our office after the first hearing, as to his coming down to the Immigration Office, I don't know.

Q. Have you heard any complaint about his wife or children being of improper conduct?

A. No sir.

Q. Outside of the man's opinions and what organization he is connected with, you haven't heard any complaint at all?

A. No sir.

Q. Do you know what will become of this family if he is deported?

A. I don't.

Q. Your Department, of course, makes no provision for that?

A. No sir.

Q. You don't know anything about what provision the Immigration Department makes?

A. No.

Q. Was that meeting you attended the meeting of the Union of Russian Workers, or the Professional Union?

A. The Professional Union.

Q. Was this threat that Manscvich made in Russian or English?

A. In Russian.

35 Q. You remember what you said he said about lawyers, it wasn't very complimentary?

A. No sir.

Q. Did he say they ought to be killed?
A. No sir.
Q. Was going to do something easier on them?
A. He didn't go into details.
Q. Tell me why, and just what he said about the lawyers in this statement?
A. Before I took this statement I asked him if he wanted to be represented by a lawyer. He said "No." I said "You have the right to be represented by a lawyer if you want one." He refused again. So I asked him the reason for his refusal to have a lawyer.
Q. Where was that?
A. Over at the Owen Building.
Q. That was when you first opened that package of papers?
A. I didn't open them.
Q. When he came there that night?
A. Yes sir.
Q. You have been a member of the Socialist Party yourself?
A. No sir.
Q. You didn't organize any branches of the Socialist Party?
A. No sir.

MIKE SLASZEK, being duly sworn, testified as follows:

(Questioned by Inspector Gangewere:)

Q. What is your name?
A. Mike Slaszek.
Q. How old are you?
A. 24.
Q. Where were you born?
A. Poland.
Q. How long ago did you come from Poland?
A. Nine years.
Q. How long are you in Detroit?
A. Two years.
Q. Are you working?
A. Yes sir.
Q. Who are you working for?
A. Dodge Brothers.
Q. How long have you been working there?
A. A year and a half.
Q. Did you ever see this man before us, Mr. Mansevich?
A. Yes, lots of times.
Q. How often have you seen him as near as you know?
A. On the streets, street cars and so on.
Q. How often?
A. Sometimes every day. Sometimes every week and so on.
Q. Did you ever buy anything from Mr. Mansevich?
A. I used to buy a book over there.
Q. What book did you buy?
A. (Witness shows copy of Volna, #17.)

Q. You say that you bought this book from this alien, Mr. Mansevich?
A. Yes sir,
Q. Where did you buy this book from this alien?
A. In May, 1921, at the House of Massess, corner of St. Aubin & Gratiot.
Q. When did you buy this?
A. In May, 1921. (Date of paper, May, 1921.)
Q. How much did you pay Mr. Mansevich for this paper?
A. Fifteen cents.
Q. And did you also buy this paper?
A. Yes. (Alien shown "Klych Anarchist" dated May, 1921.)
Q. Where have you kept these papers since that time?
A. I came home and threw them in my trunk.
Q. Is that the place you got them from and brought them up here?
A. Yes, from my trunk.
Q. How did you happen to get to the House of Masses?
A. I was walking on Gration. I saw lots of people on the street coming out and going in, so I went in.
Q. Are you a member of the Union of Russian Workers or the Professional Union?
A. No sir.
Q. How did you happen to get this paper from Mr. Masevich?
A. He came to me and asked me to buy the paper. He approached me.
Q. Did you buy this paper the first time he asked you?
A. The second time he asked me was when I bought it.
Q. You are positive that these are the papers that you bought from Mansevich?
A. Yes sir.
Q. Have you bought papers at any other time?
A. No.
Q. Did you read this paper?
A. A little bit.
Q. Did he say anything about this paper to you when you bought it?
A. He just told me to buy it and I bought it.
Q. Did he have a package of them, or how did he carry them?
A. He had many of them open, not wrapped.

36 Attorney Nelson to Witness Slaszek:

Q. Where do you live?
A. 1366 Joseph Campau, Detroit.
Q. How long have you been living there?
A. Three months. I used to live in Hamtramck.
Q. Where did you live in Hamtramck?
A. 2371 Berger St.
Q. How much money were you given to go to the House of Masses and buy this magazine?

A. It was free.

Q. How much money were you given for going to the House of Masses?

A. I didn't get anything.

Q. On Exhibit D, page 14, just read me that paragraph that is marked there so this lady can hear? (Interpreter Manikoff states that he hears sounds, but they do not mean anything.)

Attorney Nelson to Interpreter Manikoff: Mr. Manikoff, do you know what this man has read from page 14, of Exhibit "D"?

A. It doesn't mean anything in either Russian or Polish, unless if you take some words that have a meaning general in all of the languages that are derived from Latin or Greek like revolutionize or so on. Those are the only words you can derive a meaning from.

Q. This marked section that you have seen him read on page 14, of Exhibit D, is the same paragraph that you read into the record and translated for us this morning?

A. Exactly.

Q. And it is in Russian?

A. Yes sir.

Q. And it is legible and correct as written there?

A. Yes sir.

Q. Any person who could read Russian could read that?

A. Yes sir.

Attorney Nelson to Witness Slaszek:

Q. Tell me what you have read means in your own words?

A. I don't understand it.

Q. Here is the May, 1921, issue of Wolna, do you know what Walna means?

A. I think that it means cotton or wool.

Q. Here is the copy of the magazine that you said you bought from Mr. Mansevich, turn to any part of that magazine and read me anything you can understand in it?

(Interpreter: He can probably make a syllable out of the letters. He knows the alphabet, but does not understand,)

A. I don't understand it at all.

Q. This paper is in Russian?

A. Yes.

Q. You are Polish?

A. Yes sir.

Q. You don't really read Russian at all?

A. I can read a little Ukranian which has the same alphabet as Russian.

Q. What made you buy this magazine Volna?

A. He approached me at first asking me to buy this paper saying that it is good for people to read it. I at first refused, but to avoid being bothered later on, I bought the papers and put it in my pocket with the pictures facing outside to avoid further trouble.

Q. Why did you go to the House of Masses?
A. There was lots of men outside and inside, and I thought maybe there was trouble so I went to see it.
Q. How long have you been in Detroit?
A. Two years.
Q. You knew the House of Masses was a place where all kinds of radicals meet?
A. I did not know.
Q. Had you ever heard of it before?
A. I heard there was a hotel there or something like that.
Q. Did you have lots of money at that time?
A. I had a little bit.
Q. How long had you been out of work at that time?
A. About six months.
Q. Where were you working then?
A. I worked at Dodge Brothers and got laid off and then got the job again.
Q. Are you married?
A. Yes sir.
Q. Any children?
A. No sir.
Q. Is your wife living with you?
A. Yes.
Q. Are you a citizen of the United States?
A. No.
Q. Taken out first papers?
A. Not yet.
Q. How long have you been living in the United States?
A. Nine years.
Q. You are married to a Polish lady?
A. Yes sir.
37 Q. Who told you to go to the House of Masses to buy this paper?
A. I was walking on the street and saw lots of people there.
Q. Aren't you employed by a detective agency?
A. No sir.
Q. Where were you in the House of Masses when you bought this magazine?
A. I was upstairs where they were selling the papers.
Q. Did you go in and sit down and *here* the speech?
A. I entered and looked around and bought the papers and sat down for about ten minutes and walked out.
Q. Did you hear what the speaker said?
A. There was a speaker who said something about Russian Federation of Laborers, something like that. I understood it was no place for me to be in and walked out.
Q. Was that the first time you went to the House of Masses?
A. Yes.
Q. And the last time?
A. Yes.

Q. Never been there but that once?
A. I was there once more six months later.
Q. What for?
A. I went to get a glass of beer.
Q. How long did you stay there at that time?
A. About three minutes.
Q. As a matter of fact you think *thate* is a good deal of truth in this paper Volna?
A. How could I know if I can't read it.
Q. From May until now is about nine months is that the way you figure it?
A. About 8 months.
Q. What is this paper, May, 1921, in Russian also?
A. Klych Anarchist. (Call of the Anarchist.)
Q. This is the other paper you bought with the May issue of Volna?
A. Yes sir.
Q. Did you see Mr. Mansevich when you went in to buy a glass of beer and stayed three minutes?
A. I didn't go upstairs and therefore would not see him.
Q. The first time you were there and bought these papers, you were in there more than ten minutes?
A. I didn't look at the watch.
Q. Then how many times did you see Mr. Mansevich there?
A. I have seen him once there and several other places.
Q. Where?
A. I have seen him at Holbrook and Russell Streets.
Q. Doing what?
A. I have seen him at a place on Russell and Holbrook. About a hundred people were there.
Q. It was an anarchist meeting you saw him at there?
A. I don't know. I was looking for a store to hire for a shoe repairing shop.
Q. You said you saw Mr. Mansevich lots of times at the House of Masses. Now did you see him there lots of times or only once in the House of Masses?
A. This question put to me is not true because I have never been asked whether I have seen Mansevich in the Hall of Masses lots of times. I have been asked and I have said that I have seen Mansevich at different times on Holbrook and Russell and different other places.
Q. What do you keep in this trunk?
A. I keep pictures and books, story books, all kinds of things.
Q. Things that you think a lot of?
A. I don't attache any significance to those things.
Q. Is your mother's pictures in that trunk?
A. No, my father's and sister's and cousins' brothers, marriage license, etc.
Q. Some friends pictures that have died?
A. No.
Q. Friends over in the old country?

A. One.
Q. Your wedding clothes?
A. No.
Q. You are a kind of a radical yourself?
A. No sir.
Q. How radical are you? You like to go to the House of Masses sometimes?
A. I go any place to get a glass of beer.
Q. But you wouldn't go anywhere to get any knowledge, would you?
A. I haven't been.
Q. You didn't mind giving 30¢ to the anarchists?
A. I did mind, but I couldn't help it, I didn't want to be bothered so I gave the 30¢.
Q. Why didn't you leave?
A. I wanted to stay and see what was in there, whether a show or something free of charge.
Q. They didn't charge you for coming in?
A. No.
38 Q. They didn't charge you for going out?
A. No.
Q. There were a lot of other people there?
A. About two or three hundred.
Q. Just like you?
A. Bigger, smaller, taller.
Q. They were all sitting quietly listening to this speaker?
A. Some were walking around and talking and so on.
Q. What did they do down at Russell and Holbrook?
A. They were sitting quite a while and a man was at the table with his arms on the table talking to them.
Q. How many times were you at Russell and Holbrook Sts.?
A. I have been there once. I thought to rent that place for a shop, but it was too big and I couldn't rent a part of it.
Q. Do you know Mr. Apelman?
A. No.
Q. How long have you known him?
A. I don't know him.
Q. Were you ever in the Owen Building on the other side of the Post Office?
A. No.
Q. Who asked you first about Mansevich?
A. I had some business in this office down stairs and while there I noticed a book on the table with a photograph similar to that I bought. While I was looking at it the officer *the officer* that sits across to me (Inspector Gangewere) asked me whether I am one of those that reads this paper and if I am interested in it. I said no, but I have one at home similar to this. Then he asked me to tell him whether I remember the man that sold it to me.
Q. When was that?
A. A week ago.

Q. What was your business?

(Inspector in Charge P. L. Prentis: A confidential informant of the Government was here with him, whose identity we refuse to disclose and who we are not in a position to disclose.)

Q. You are working at Dodge Bros., now?
A. I just got laid off. I am not working there at present.
Q. Just when were you laid off?
A. Just after Christmas.
Q. What did you do there?
A. Millwright.
Q. Let me see your hands. You haven't done work for a year or more. What have you done?
A. Millwright.
Q. Your hands are softer than mine and I am a lawyer?
A. I can't help that.
Q. In what department at Dodge's?
A. 34.
Q. Do you work under the same name?
A. Yes.
Q. Were you ever known by any other name?
A. No.
Q. Why didn't you burn these papers up?
A. I forgot about them altogether. I put them in the bottom of my trunk and never thought of them.
Q. As a matter of fact, witness, you are a radical yourself and the Department of Justice has found you and lodged charges against you and has promised you immunity if you will testify against Mansevich?
A. I never been a radical and have never had anything to do with the Government since I live.
Q. You have been promised immunity from prosecution if you testified against Mansevich?
A. There is no prosecution whatever against me. I am not guilty of anything.
Q. You have been promised they won't prosecute you?
A. No promise was made to me.
Q. An officer of the Department of Justice brought you to this office on a charge of being a radical?
A. I wasn't brought here for that.
Q. Who told you to go to the trunk and get those books out of the trunk?
A. When I was here I told in the office that I have got a picture on a paper similar to that and they told me to bring it.
Q. How long was it before you brought it?
A. Five days ago.
Q. Did you tell them you bought it from Mansevich?
A. I have told them that I don't know the man's name and they asked me if I would recognize him and I said yes.
Q. Did they bring him in to you to see?

A. No.
Q. When did you first see Mansevich after bringing these books to this office?
A. Today.
Q. Since you came in this room?
A. I saw him down stairs.
Q. This afternoon or this morning?
A. In the afternoon.
Q. Who brought you down here today?
A. I came myself.
Q. Have you got a subpœna?
A. I came myself.
Q. Who told you to come today?
A. I came of my own accord.
39 Q. Who told you to come?
A. I had to come. I had to see somebody here.
Q. Who did you have to see here?
A. A man.
Q. Who is he?
A. This man (indicating Inspector Gangewere).
Q. He told you to come here on this case?
A. He didn't tell me to come. I had my own business to see him.
Q. Why didn't you come this morning?
A. I had no time.
Q. What were you doing this morning?
A. I was looking for work.
Q. Didn't Mr. Gangewere tell you to come this morning?
A. He didn't tell me anything.
Q. Who pointed out Mansevich to you?
A. I noticed him myself.
Q. Where?
A. This afternoon, in this building.
Q. In this room?
A. Down stairs.
Q. What time?
A. At one o'clock.
Q. Was Mansevich here at one o'clock?
A. He was just coming outside.
Q. We left here at 20 minutes of one this morning. Mansevich left with us. Aren't you mistaken?
A. I don't think so. It was the same hour.
Q. Didn't you see me with him?
A. I did not look at anybody in particular. I noticed him though.
Q. Were you alone?
A. Yes.
Q. Was Mansevich alone?
A. He was with another man who was wearing a blue suit and a workingman's shirt.
Q. Did he have one arm off?
A. He had one hand in his pocket.

Q. Is this the man right here (indicating John Buroshka)?
A. Yes.
Q. What is his name?
A. I don't know.
Q. Who told you Mansevich's name?
A. I know his person, but not his name.
Q. Who told you his name, you have given his name?
A. I have listened to the conversation about him, so I understood it was his name.
Q. The Inspector told you to wait down stairs?
A. He asked me whether I would recognize the man and to tell the truth.
Q. Who asked you that?
A. This man (indicating Inspector Gangewere.)
Q. Tell us now what made you tremble and flush red and white when you were asked to read this Exhibit D, page 14?
A. I came in there was a room full of people and I don't know what they want from me.
Q. You knew that you were wanted to identify this man Mansevich?
A. I have seen him down stairs, but I didn't know for what he was brought here or why he came here.
Q. You told Mr. Gangewere down stairs that you would swear that it was Mansevich that sold you that paper?
A. When he called me he didn't tell me exactly what for.
Q. What did he tell you?
A. He told me to come upstairs.
Q. Where were you from one o'clock until you came here to testify?
A. I was walking around the city.
Q. Why didn't you come here?
A. I didn't have to come. I came when it was necessary.
Q. Who told you when it was necessary?
A. I was here and when the Inspector saw me he told me to come up.
Q. This is the only hearing in the Mansevich case you have been asked to attend?
A. The only time I was spoken to before was whether I would recognize the man from whom I bought the papers. I said "Yes, because I know him well".
Q. Were you here last Saturday?
A. No.
Q. Why weren't you here last Saturday?
A. What for?
Q. You don't even know there was a hearing before in the Mansevich case?
A. I have read it in the paper.
Q. But you didn't know it before you read it?
A. No.
Q. Which paper did you read it in?
A. The Record.

Q. Did you read it in the Detroit News on Saturday or Sunday?
A. No.
Q. Who paid you for coming down here today?
A. Nobody paid me.
Q. Are you going to be paid?
A. Who will pay me?
Q. Haven't you been promised a witness fee?
A. I haven't been told I would be paid *as* as a witness, I was asked whether I will recognize the man who sold me the paper.
Q. What does your wife keep in this trunk?
A. Her things, my shirts.
Q. Have you looked at these papers since you bought them last May?
A. Only after I recognized that I had a similar paper in my home. After I had been here.
Q. Weren't you afraid to keep them?
A. I didn't know what they were, because I didn't know how to read them.

Inspector Gangewere: The Interpreter will now read and translate from Issue #17, of the Magazine Volna, the following extracts:

(*Extract from Page 5, Marked (1).*

Anarchism means peace and happiness for all. Anarchists with pleasure would renounce of using force. In the present form force is practiced by all, and we recommend the oppressed to use force against force and only against force as a necessary medium of defense.

(*Extract from Page 6, Marked (2).*

The best medium against the hungry is to put in their meals or in their eatings a high poison or arsenic. It was written openly and shame-ly by the yellow press of 1887. The best medium to get rid of enslavers and free eaters is to stop production, rise with arms in your hands and to take of the national richness from the hands of the robbers, say we.

(*Extract from Page 8, Marked (3).*

The destruction of the present form of things with all its apparent forms of slavery and oppression went with all the force and power of the laws, courts, armies, police, superstition, Church and Government, with one word all of the things of the capitalistic society, could be performed, not otherwise, only by way of revolutionized force, only through civil war and armed uprising.

(*Extract from Page 6, Marked (4).*

Long live anarchy, the symbol of freedom or liberty.

Inspector Gangewere: I shall introduce #17, of Volna, as evidence in this case, the same marked Exhibit I, and this paper Klych Anarchist, marked Exhibit J.

Inspector Gangewere to alien: In addition to the charges already contained in the warrant of arrest you are also charged with being an alien who believes in, advises, advocates, or teaches the duty necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officials generally) of the Government of the United States or of any other organized government, because of his or their official character, and that you are a member of or affiliated with an organization, association, society or group that advises, advocates or teaches opposition to all organized government, or that advocates, advises or teaches the overthrow by force or violence of the Government of the United States or of all forms of law.

Attorney Nelson to alien:

Q. Do you know this man Slaszek?
A. No.
Q. Did you ever see him before you came into this room this afternoon?
A. No.
Q. Did you ever sell him any literature like Exhibits I and J?
A. No.
Q. Did you ever sell any radical literature at the House of Masses?
A. No.
41 Q. Did you ever sell any radical literature at Russell and Holbrook Sts., Detroit?
A. No.
Q. Did you hear what Mike Slaszek said about you selling him in May, 1921, two papers Exhibits I and J?
A. I heard what he said, but I never sold it to him.
Q. Is there any truth in what he said about you?
A. I don't know anything about what he said.
Q. Is it true?
A. No.
Q. I show you Exhibit C, and ask you if you wrote your name on it?
A. Yes, I did.
Q. When and where?
A. Just before my arrest on Caniff St.
Q. Who did you give it to?
A. Steve Zalefsky.
Q. Did you know what he was going to do with it?
A. I did not know.
Q. Did he ask you to sign it?
A. He asked me to write my address and told me he would move some personal effects over to my house.
Q. He wanted your address to do that?

A. Yes. He told me he was leaving town and because I own my own house here, he would send his belongings to me.

Q. What did you mean by belongings, literature or clothing?

A. He told me he was going to send a trunk with his belongings and when he would get work here he would call for same.

Q. Did you know he was going to send any literature over there?

A. I did not know.

Q. I show you Exhibit B and ask you if that is your signature on the bottom?

A. Yes.

Q. Where did you sign that?

A. When they brought me from work from Fords. I don't know where it was.

Q. Do you read English?

A. No.

Q. Do you know what is in this paper, Exhibit B?

A. No.

Q. Was that ever written out and handed you in Russian?

A. No.

Q. Was anything said to you about a lawyer at that time?

A. Yes.

Q. What was said?

A. Have you got a lawyer.

Q. What did you say?

A. With pleasure, I have no money.

Q. What did they say?

A. Nothing. Then they said, "Are you going to defend yourself in your case."

Q. Are you still living in that same house on Nagle Street?

A. No.

Q. Why not?

A. I sold it.

Q. Did you own it?

A. Yes.

Q. How much did you have paid down on it at the time of your arrest?

A. $1,500.00.

Q. For how much did you sell?

A. For $450.00.

Q. Are you married?

A. Yes.

Q. Is your wife in good health and able to work?

A. She can't work, having little children.

Q. But she is in good health?

A. How could she be in good health if she lacks necessary things.

Q. If she had what she needs to eat and wear and had the worry of this law suit off her mind, she would be all right?

A. Yes.

Q. How many children, if any, have you?

A. Three.

Q. How old are they?
A. Seven, six and four.
Q. Are they all girls?
A. Yes.
Q. How long have you been living in this country?
A. 11 years.
Q. Did you buy for yourself any copies of Volna?
A. I did buy it for myself.
Q. When?
A. About a year ago.
Q. Did you buy them to read?
A. Yes.
Q. Have you bought any since March or April, 1921?
A. I think so.
Q. Did you ever have a hundred or a hundred and fifty in your house for safekeeping?
A. Never.
Q. Did you ever say that you had?
A. No.
Q. Do you believe all that Volna says?
A. I believe it, but I don't perform it. I believe in what is written in it.
Q. You believe in what Volna says?
A. I believe in what Volna says, but I don't take any notice and don't want to do it.
Q. Do you know what is in this statement Exhibit B that Mr. Apelman says he took on the third of September, 1921?
42 A. I don't know the contents of it, but I know what I told him.
Q. Did you tell him that you did not believe in any Government?
A. No.
Q. Did you tell him that you did not believe in law as we have it at the present time?
A. I answered him that I believe only in human laws and in the justice of the humanity.
Q. Did you say to him that you thought the American Government should be overthrown the same as the czar's?
A. I did not. I told him that is the business of the American laborers.
—. Did you tell him that you believed in armed revolution and force against force?
A. I have told him I am against force and I cursed one of the officers for arresting me and using force on me.
Q. Did you ever suggest killing any officers of the Government?
A. Never. Only once to someone who was here.
Q. Did you point out Wilcox and say that he should be killed?
A. I said to the officer that I respect highly the engineers, doctors, contractor- and so on that bring any use to society, but pointing to him I said I curse you that bring misfortune to my family.

Q. Did you make any other statement to these officers from which it could be concluded or inferred that you were in favor *or* killing them or any other Government officials?

A. Never.

Q. Did you ever, to these officers, or anyone else, advocate the violent overthrow of the Government of the United States?

A. Never.

Q. Do you believe in the violent overthrow of the United States Government?

A. No.

Q. Do you believe in killing Government officers to remove them from office?

A. I am against killing, myself.

Q. Against killing any human beings?

A. I don't foster killing of men or human beings. I would like to help them.

Q. Were you ever a member of the Union of Russian Workers?

A. No.

Q. Were you a member of the Professional Union?

A. Also no.

Q. Were you a member of a Russian school?

A. Yes.

Q. What kind of a school was that?

A. A Russian Co-operative Automobile School.

Q. What is that, for training how to run and make automobiles?

A. Yes.

Q. How long did you go to that?

A. About three months.

Q. Did you learn a good deal about making automobiles?

A. I didn't finish the whole course and didn't take an examination.

Q. How did you go to school; at night after work?

A. I worked on two shifts so I attended nights and days.

Q. Did you ever tell Mr. Apelman that you were a member of the Professional Union?

A. He showed me that mandate and asked me "Where do you belong now, 1338 Russel St." I answered "No place."

Q. I show you Exhibit F and ask you if your name is on that?

A. This is my own signature, first name and second name.

Q. When did you put it on there?

A. When they brought me from Fords to Mr. Apelman.

Q. When they arrested you?

A. Yes.

Q. You signed it on that paper in the Owen Building by the Post Office where Mr. Apelman, Mr. Wilcox and Mr. Barkey were?

A. Yes. I don't know the others by name, but Mr. Apelman showed me it three times.

Q. Who, if anybody, told you to sign your name on this paper?

A. They showed me this paper once and asked me whether this is my mandate and I said no, and they told me it reads Mansevich and I said that is my name, but there is no first name appearing on

it, and they were urgently asking me whether it was my mandate. Then I showed them that my first name was Nick and I put my name on that paper in my own handwriting for justice sake.

Q. Did you ever tell Mr. Appelman that you were a member of the Union of Russian Workers?

A. No.

Q. Or of the Professional Union?

A. I just told him that instead of the Professional Union,
43 it was now a kind of a parents' school, sort of a kindergarten or something. Mr. Apelman referred to the place at 1338 Russell St., stating that it is the meeting place of the Professional Union. I said, no, it is a p-rental school or something.

Q. Were you ever a delegate from the Union of Russian Workers and did you tell Mr. Apelman that you were?

A. No.

Q. Did you ever tell Mr. Apelman that you had a lot of copies of Volna at your home?

A. No.

Q. Did you ever tell Mr. Apelman that you gave a man permission to send a lot of literature and copies of Volna to your house?

A. Never.

Q. Did you ever tell him that you paid 25¢ in the Professional Union?

A. He says to me "So you pay 25¢ a month to the Professional Union". I said "No, no, I paid 25¢ monthly for the upkeep of the parental school with which money we hire teachers to teach.

Q. What did they teach you at this school?

A. They teach children.

Q. To read and write, arithmetic?

A. Yes.

Q. Did you ever tell him that you bought and read and made contributions to the Americanski Isvestye?

A. I told Mr. Apelman that I bought this, but never made any contributions.

Q. Are you an anarchist?

A. I am a human being.

Q. Do you believe in the violent overthrow of all Government and Law?

A. How long will I have to say that I am always against force.

Q. Do you believe in killing Government officials?

A. Why would you kill human beings. There is no necessity to kill human beings.

Inspector Gangewere to Alien:

Q. You stated that you signed your name on this paper marked Exhibit F when you were brought to the office of the Department of Justice at the same time that you made a statement before the Agent of the Department of Justice?

A. Yes.

Q. Why was it that you *signed* your name one way on one paper and another way on another paper on the same day?
A. It was because I was taken right from work and was nervous and tired.

JOHN BUROSHKA, duly sworn, testified as follows:

Attorney Nelson to Witness:

Q. What is your name?
A. John Buroshka.
Q. How long have you been living in this country?
A. About 15 years.
Q. Where do you now live?
A. 1945 Trowbridge.
Q. Own that property?
A. Yes sir.
Q. What is it, a house?
A. Yes sir.
Q. Single house?
A. Two family house.
Q. Have you ever been in trouble yourself, arrested or anything?
A. No sir.
Q. Do you know Nicolai Mansevich?
A. Yes, I know him.
Q. How many years?
A. About 30 years.
Q. Are you on his bond?
A. Yes sir.
Q. Has Nicolai always been a peaceful, law-abiding citizen as far as you know?
A. As far as I know, yes.
Q. Ever work with him?
A. About nine years ago.
Q. Was he a good worker?
A. Yes sir.
Q. Strong?
A. Yes sir.
Q. Steady worker?
A. Yes sir.
—. Did he get drunk and make a lot of trouble?
A. I never saw him drunk.
Q. Is he good to his family?
A. Yes.
Q. Does he keep reading matter in his home, have the children go to school?
A. Yes sir.
Q. All the time?
A. Yes sir.
Q. What is his reputation among the people who know him for being honest and industrious?

A. Good.
44 Q. Do you know anything against him at all?
A. No sir.
Q. What is his reputation among those who know him as to being a peaceful law-abiding citizen, good or bad?
A. I don't know anybody that would go against him.
Q. You couldn't find among his friends and acquaintances anybody that would testify against him?
A. Not since I have known him.
Q. You lived here during the War?
A. Yes sir.
Q. You know Nicolai Mansevich here in Detroit then?
A. Yes sir.
Q. Did he, during the war, do anything to hurt or harm the Government in any way during the War?
A. No, I didn't see him.
Q. Did you hear of him doing anything or saying anything?
A. No sir.
Q. Did you see him frequently?
A. Pretty nearly every night.
Q. Did you hear him advocate doing any harm to the Government or Government officials at any time?
A. No sir.
Q. Where did he work during the War?
A. Ford Motor Co.
Q. He is a good worker?
A. Steady worker, I know.
Q. Do you know Vladimir Klomovich and why he couldn't come to this hearing today?
A. He works in a Highland Park School. I think he is a janitor and couldn't get away today. That is what he told me yesterday.
Q. Does he know Nicolai Mansevich?
A. Yes.
Q. Do you know of any reason why it would be better for this country to have Nicolai Mansevich leave here?
A. I think it would be bad for this country if they sent him away.

Inspector Gangewere to Witness:

Q. Are you a citizen of the United States?
A. I have first papers.
Q. Do you belong to the Professional Union?
A. No sir.
Q. The Union of Russian Workers?
A. No sir.
Q. Never have belonged to them?
A. No sir.

Inspector Gangewere to Alien:

Q. What is your present address?
A. 10233 Duquindre St., Detroit, Mich.

Ins-ector Gangewere to the Attorneys:

Q. Have you any further evidence you wish to present?
A. We have no further evidence.
Q. Do you wish to file a brief?
A. We do.
Q. Do you have any objections in any way to offer to the interpretation of the evidence in this hearing?
A. I think the record might show that our interpreter has been fair and so far as we know now the interpretation has been correct.

Hearing closed.

45 *Disposition.*

Alien released on $1,000.00 bond.

Description.

Height 5' 7"; medium complexion; brown hair; blue eyes.

Passport.

Polish Passport on file at this office.

Exhibits.

A. Copy of warrant of arrest.
B. Statement of alien before Agent Apelman of the Department of Justice.
C. Slip with name and address of alien.
D. Copy of Wolno, No. 18.
E. Copy of statement made by alien before Inspector Gangewere.
F. Copy of mandate of Union of Russian Workers.
G. Manifest of anarchistic communists.
H. Copy of constitution of Russian Workers.
I. Copy of Wolna, No. 17.
J. Copy of Glytch Anarchist.

Findings.

From the foregoing evidence and exhibits, I, Robert W. Gangewere, duly authorized examining officer in this case do find the following facts:

That Nicholai Mansevich is an alien, namely a citizen of Poland, of Russian race, married, wife and three children residing in the United States; entered the United States at the Port of New York in 1911 and has resided in the United States continuously since that date.

Evidence produced shows that this alien made a statement before Agent Apelman of the Department of Justice on September 3rd,

1921, signed same and swore to it, after having been made fully acquainted with the contents, Exhibit "B". He made another statement to the examining officer on the same date at which time the questions asked and his answers were properly translated, Exhibit "E".

46 In these statements he admits that he is a member of the Professional Union, evidence produced showing that it is an anarchist organization. In Exhibit "E" he further admits that he believes in the killing of Government officers and the overthrow of the Government of the United States by force or violence.

That the alien is opposed to law and Government authority is plainly shown in his answers on page 22.

Alien's connection with an anarchistic organization as far back as 1919 at least is shown in Exhibit "F", although alien now denies same.

On September 2, 1921, three bundles containing copies of the Publication Wolna, issue No. 18, were being delivered to this alien's address. One bundle of these papers was received by the alien's wife without any protest and was ordered to be placed in the attic of the house where the same was later seized by Agent Wilcox of the Department of Justice. Evidence shows that these papers were delivered by a drayman who had been handed two postal cards from the American Express Co. and a slip of paper bearing the alien's name and address Exhibit "C", alien admitting that he wrote the name and address on this slip and it is quite evident that the papers were delivered to his address at his direction and that he knew the nature of the literature that was being delivered.

Evidence further shows that this alien had in his possession and sold the publication "Wolna" issue No. 17, and "Klych Anarchist" in May, 1921, I and J.

47 Evidence shows that the publication "Wolna" is the official organ of the Anarchist Communist Groups, that it teaches and advocates the overthrow by force or violence of all organized government and that it teaches anarchism.

The alien has been reading the publication "Wolna" and it is evident that he fully understands its teachings.

Alien admits that he believes in what "Wolna" says (Exhibits B and E and page 21 of hearing) excepting none of its teachings, and must therefore believe in the anarchist doctrines which are freely propounded by this publication.

That the alien is an anarchist is proven by his own admissions and that he did not care to deny this fact is quite plainly shown in his answer to the direct question "are you an anarchist" (page 23) when he stated "I am a human being".

All allegations in the warrant of arrest as well as the additional charges added during the hearing being proven, I respectfully recommend the deportation of this alien. Robert W. Gangewere, U. S. Immigration Inspector. HA.

48 U. S. Department of Labor,

Immigration Service.

Report of Hearing.

In the case of Nicolai Mansevich (Nickolay Mansewich) Under Department Warrant per Telegraphic dated September 7th, 1921. Hearing conducted by Robert W. Gangewere, U. S. Immigrant Inspector, at Wayne County jail and U. S. Immigration Officer, Detroit on September 7th, and 12th, 1921. Minutes taken and transcribed by Harry Addelson, Jr., Clerk. Said Nicolai Mansevich (Nickolay Mansewich) being unable to speak and understand the English language satisfactorily an interpreter, Rev. D. C. Darin, competent in Russian was employed after being duly sworn.

Said Nicolai Mansevich (Nickolay Mansewich) was then informed that the purpose of said hearing was to afford him an opportunity to show cause why he should not be deported to the country whence he came, said warrant of arrest being read, and each and every allegation therein contained carefully explained, to him. Said person was then offered an opportunity to inspect the warrant of arrest and the evidence upon which it is issued, which privilege was accepted; and being first duly sworn the following evidence was then and there presented:

49 U. S. Immigration Service.

Detroit, Mich., September 7th, 1921.

Present: Nicolai Mansevich (Nickolay Mansewich), alien; Robert W. Gangewere, Immigrant Inspector.

Warrant served on alien at Police Headquarters, this date.

Hearing was opened at the Wayne County Jail, Detroit, on the same date.

Q. What is your correct name?
A. Nicolai Mansevich.
Q. Have you used any other name or names at any time?
A. No sir.
Q. How old are you?
A. 35 years old, I was born May 2nd, 1886.
Q. Where were you born?
A. Cichaniny, Grodno, Russia, now Poland.
Q. You are now advised that you have the right to be represented by counsel in this hearing; do you wish to engage counsel?
A. I want to see my wife first.

Hearing adjourned until Monday, September 12th, 1921, to allow alien to get counsel.

Alien left in custody of Sheriff of Wayne County.

50 U. S. Immigrant Service.

Detroit, Mich., September 12th, 1921.

Hearing in the case of Nicolai Mansevich (Nickolay Mansewich) resumed at the U. S. Immigration Office, Detroit, Michigan, September 12th, 1921.

Present: Nicolai Mansevich (Nickolay Mansevich) alien; Rev. D. S. Darin, 2918 Hendrie St., Detroit, Michigan, interpreter; Robert W. Gangewere, Immigrant Inspector; Harry Addelson, stenographer.

Q. Have you retained counsel?
A. No.
Q. Then do you waive your right of counsel and are you ready to proceed with this hearing?
A. Naturally, I am willing to proceed without an attorney, as I have no means of hiring one.
Q. Are you married or single?
A. Married.
Q. What is your wife's name and address?
A. Helen Mansevich, 11569 Nagel St., Hamtramck, Mich.
Q. Have you any children?
A. Three.
Q. Give their names and ages?
A. Anna, six years, Mary, five years, and Jennie, three years.
Q. Where were your children born?
A. All in Detroit.
Q. What is your occupation?
A. Laborer.
Q. Can you read and write?
A. Yes (reads Russian).
Q. Of what race are you?
A. Russian.
Q. Of what country are you a citizen now?
A. Poland.
Q. Did your father ever live in the United States?
A. No.
Q. When and w-ere did you last enter the United States?
A. On April 4th or 6th, 1911, at New York on the S. S. "Carpathia".
Q. Have you lived in the United States continuously since that date?

A. Yes.

51 Q. Have you been out of the United States at all since that time?

A. No.—
Q. How long has your wife been in the United States?
A. About seven years. She came in 1914

Q. Did you live in the United States in 1911 at any time?
A. No.
Q. Have you taken out citizenship papers in the United States?
A. Yes first papers.
Q. At what places have you resided since your entry *to* the United States?
A. Highbridge, N. J., Wilkes-Barre, Pa., and Detroit, Michigan.
Q. Have you been steadily employed up to this time?
A. Yes sir.
Q. By whom were you employed last?
A. The Ford Motor Co., Detroit.
Q. How long have you worked there?
A. About eight and one-half years.
Q. I will now show you this statement, which I will introduce in this record as Exhibit B, the warrant of arrest being Exhibit A, and will ask you if the signature attached thereto is yours?

(Alien shown statement taken before Special Agent Apelman, of the Department of Justice, on September 3rd, 1921)?

A. Yes, that is my signature.

The interpreter will now read and translate this statement to you. (Mr. Darin reads and translates statement to alien.)

Q. What have you to say in regard to this statement which was translated to you by the interpreter?
A. The whole statement is correct with the exception of one of the last questions. I mean to say that I did not know that the literature brought to my house was the literature of the Union of Russian Workers. I did not think it could be the literature of that organization.

52 Hyman Seid introduced by Inspector Gangewere as witness:

(Duly sworn.)

Q. What is your name?
A. Hyman Seid.
Q. What is your address?
A. 9629 Cameron Avenue, Detroit, Mich.
Q. What is your business?
A. Cartage.
Q. Did you deliver any express matter to 11569 Nagel St., Hamtramck, Mich. on or about September 2nd, 1921?
A. Yes sir.
Q. What was the nature of these articles that you delivered to this address?
A. Three bundles.
Q. Where did you get these bundles?
A. From the American Express Co.
Q. How did you happen to get these bundles?
A. My wife gave me an order to get them, so I got them.

Q. Did you know what was in these bundles?
A. No sir.
Q. How did you know where to deliver these bundles?
A. My wife gave me two postal cards from the American Express Co. and between these cards there was a small piece of paper with the Nagel St. address on it.
Q. Did you see the person who gave your wife this order?
A. No.
Q. When you came to this address on Nagel St., who was there?
A. A woman.
Q. What did you say to this woman?
A. I asked her if she expected something by express, and she said yes. I asked her where I should put it, and she told me up stairs. I took one of the bundles and brought it up.
Q. Did this women give you a gunny sack when you came to her place to cover up the bundles?
A. Yes, I asked her for the sack so I could bring up the three bundles at once, but they were so heavy I could only carry one up at a time.
53 Q. Didn't you tell one of the officers that came there in after you came to this address that the lady of the house gave you this sack, to cover up these packages?
A. Yes, naturally if you put the package in a sack, it would be covered.
Q. Did you ever deliver packages of this kind before?
A. No sir.
Q. Did you ever deliver packages of any kind to this same address before?
A. No sir.
Q. How many orders do you receive from Gordon to deliver packages?
A. None.
Q. Were you ever picked up before for carting bundles of this nature?
A. No sir, never.

Anna Seid introduced by Inspector Gangewere as witness:

(Duly sworn.)

Q. What is your name?
A. Anna Seid, I live at 9629 Cameron Avenue, Detroit.
Q. Is Hyman Seid your husband?
A. Yes sir.
Q. What is your husband's business?
A. Cartage business.
Q. Did you at any time receive an order to deliver express matter to Nagel Avenue, Hamtramck?
A. Yes sir.
Q. Who gave you this order?
A. Two young fellows, I don't know who they were.

Q. Would you recognize these men if you saw them?
A. May be I could.
Q. What were their ages?
A. Between twenty-two and twenty-five years.
Q. What did they give you when they gave you this order?
54 A. They gave me two postal cards with a small slip — paper between them with the Nagel Street address on it.
Q. Did they tell you what this matter was that they wanted delivered?
A. They asked for my husband and he was doing a moving job in the next block so I sent my boy over to him to deliver the order.

Inspector Gangewere to Alien: The stenographer will now read and the interpreter will translate to you the testimony just offered by Mr. Hyman Seid and wife Anna Seid, and you will be given an opportunity to question the said witnesses if you so desire. (Testimony of above named witnesses read by stenographer and translated to alien by interpreter.)

Q. Do you desire to question these witnesses?
A. No sir.

THOMAS C. WILCOX introduced as witness by Inspector Gangewere.

(Duly sworn.)

Q. What is your name?
A. Thos. C. Wilcox.
Q. What is your business or calling?
A. Agent of the Bureau of Investigation, U. S. Department of Justice, located at Detroit, Michigan.
Q. Did you, on September 2d, 1921, receive a notice of radical literature being held at the American Express Co. office?
A. Yes, arrangements had been made prior to September 2nd, whereby we knew this shipment was coming to Detroit, and we were to be notified when the shipment reached here. On September 2nd, shortly after one o'clock my chief received a message that the packages were about to be delivered. I was told to go to the
55 American Express office, Mr. Barkey, the Special Agent in charge, Department of Justice, going with me. Upon arrival at the express office, I saw three bundles delivered to an expressman by the name of Hyman Seid. These were three large and heavy bundles. After he got the bundles on the truck, Mr. Seid left the office and I and Mr. Barkey followed in my automobile. The expressman took a round about trip through many side streets, and alleys and finally stopped in front of 11569 Nagel St., Hamtramck, Michigan. We saw him go into the house. He came out of the house with a large gunny sack with which he covered one of bundles and took it into the house. When he came out of the house he was intercepted by Mr. Barkey and myself and asked where he had delivered that bundle. He told us to that house, pointing at 11569 Nagel St. He was detained by Mr. Barkey and I went into the house.

On the second floor of the house which is an attic, I found the bundle which he had just delivered. I went down to the first floor and there met a lady who said her name was Mrs. Nicolai Mansevich. I asked her if she lived in this house alone, and she said she lived there with her husband and three children. I asked her about the bundle just delivered and she said some men had come to her house the night before and arranged with her husband for the delivery of these bundles. In the attic of this house was a stand or table, apparently arranged for a speaker's stand. Grouped about the side of the attic were a lot of chairs, the general appearance of the attic being that of a meeting place. We took possession of the bundle in the house as we did also of the two bundles remaining on the express wagon.

56 Mrs. Mansevich informed me that her husband was employed at the Ford Motor Co. Leaving this address, I proceeded to the Ford Motor Co. where I located Nicolai Mansevich and took him into custody for investigation. We returned to the office of the Bureau of Investigation where Mansevich was turned over to Agent Apelman for further investigation.

Q. What was in these packages?

A. All three contained the anarchistic magazine "Wolna", Issue #18.

Q. After you took Mr. Mansevich into custody, did you question him.

A. During the time Mr. Apelman was talking to him, I talked to him also. I questioned him about the number of chairs and the presumable meeting place in his attic. He admitted that he had carried the chairs up there the night before.

Q. Did he admit that meetings were being held at his house?

A. He said that the attic had been used as a meeting place by some of the boarders, and that he didn't care who used it as long as he was paid for the use of it.

Inspector Gangewere to alien: The stenographer will now read and the interpreter will translate to you the testimony just offered by Mr. Wilcox, and you will be given an opportunity to question the said witness if you so desire.

(Testimony of Mr. Wilcox read by stenographer and translated to alien by interpreter.)

Q. Do you desire to question this witness?

A. Yes sir.

Alien to Mr. Wilcox:

Q. Did you get your idea that the attic of my house was a meeting place from the looks of the place or from what some one told you?

A. I had no information that this was a meeting place until I got inside the door. The first thing I noticed was the arrange-

57 ment of chairs, the apparent speaker's stand or platform, the manner in which the chairs were grouped, denoting that they either had been or were about to be used for a meeting place.

Inspector Gangewere to alien:

Q. Have you any further questions to ask this witness?
A. No sir.
Q. Have you anything to say regarding this witness' testimony?
A. As regards to the testimony relating to the apparent meeting place in my house, I have the following to say:

Before I moved to the house I am now occupying, I lived in a big house that had seven rooms and naturally had a lot of furniture. I sold that house and moved into my present home which only has four rooms. As this is a small house compared to the former one, I had no place to put my furniture, so I took some of it up stairs into the attic, and let it stay there, having no room for it elsewhere. I suppose that the furniture being up there led them to believe that the place was being used for meetings.

Q. Were meetings held at any time in your house by anybody?
A. No, two or three people came in and talked, but that is no meeting.
Q. Did your boarders have any meetings in your house?
A. No, they did not, I have only one boarder. The house is small and there are five in the family and not much room for any boarders.
Q. Did you order this literature sent to your house?
A. No.
Q. Who did?
A. I don't know.
Q. Where were the arrangements made to have this literature sent to you?
A. In Caneff's.
Q. Had you seen this man before?
A. Yes.
58 Q. Where?
A. At meetings.
Q. What kind of meetings?
A. General Russian meetings, what kind they were, I don't know.
Q. What is the name of this man?
A. Steve Zelevsky.
Q. Where does he live.
A. I don't know.
Q. What did he tell you that he was going to have sent to your house?
A. He just said to me that "I am going to move my belongings over to you." All he said was that he was going away and that he would send his belongings over to my house.
Q. Did he say that this literature was going to be sent over by the American Express?
A. No.
Q. How did your wife know that the expressman was going to deliver bundle from the American Express Co. to your house?
A. I told my wife that a certain man wanted to remove his belongings to our house and she expected them.

I shall introduce as evidence in this case a copy of the magazine "Wolno", Issue #18, and the same will be marked Exhibit C. The following is a translation by the interpreter of a paragraph on page 14 of this magazine:

"Working amongst the struggling laborers, we are in a position to lead them to a general strike in one place, the whole country or through the whole world and prepare our comrades to the thought that armed uprising between the strikers and ruling powers (army, police, militaire and guards). That is stepping on the road to revolution. The realization of the revolution of strikers and the character of ideas of the active minority will depend upon whether the general uprising will proceed as a general social revolution or whether it will fade away in the shadows of struggling political parties for power."

Q. Have you seen this paper before Mr. Mansevich?

A. I have read this magazine, but not this issue #18.

Q. What numbers have you read?

A. As stated before, I had in my house about thirteen or
59 fifteen numbers of this maga-inze, which I bought and read.

Q. Did you have any of these papers in your house for the safekeeping for your friends?

A. No, only those I bought for myself. I shall introduce the statement made by the alien before the examining officer on September 3rd, 1921, as evidence in this case, the same to be marked Exhibit "D" (Statement read and translated to alien by the interpreter).

Q. Have you anything to say regarding this statement.

A. I am getting a better explanation of things at the present time, and I would like to change some of the statements that I previously made because I was excited in my previous statement and might of said things that I did not mean. First, in regard to the literature found in my house I really did not know that it was anarchistic literature, in the second place my home was not a meeting place. In the third place, about the killing of Government officers, I believe in those that are holding positions as teachers in different lines of endeavor, but as regards those that are for oppression and arrest of people, I do not believe in them and I curse them and believe in their overthrow.

Q. Do you believe and advocate that such Government officials as you have mentioned should be assassinated?

A. Yes, they deserve it.

Q. Of what organizations are you a member at the present time?

A. At the time of my arrest I was a member of the Professional Union.

Q. How long have you been a member of this Professional Union?

A. Eight or nine months.

Q. Prior to belonging to this Union to what organizations did you belong?

A. In 1919, I belonged to the Union of Russian Workers.

60 Q. How long did you belong to the Union of Russian Workers?

A. Eight or nine months, it wasn't a year.

Q. What papers are distributed in the Professional Union?

A. Amerikanski Izvesta, and sometimes during the meeting they deliver this paper "Wolno", and the "Rusko Golos".

Q. Does this organization of the Professional Union advocate a future society?

A. The Professional Union does teach some kind of future progress.

Q. Does this organization teach a condition of society where no laws or rules are necessary?

A. No.

Q. As a matter of fact this organization is an anarchist society is it not?

A. No.

Q. This paper "Wolno" is published by the Anarchist Communist Group and you say this paper is distributed in your organization?

A. Yes sir. I admit that I am a member of the Professional Union but I do not know exactly what the aims and doctrines of this organization are, whether they are anarchistic or not.

Mr. JOSEPH APELMAN introduced as a witness. (Duly sworn.)

Q. What is your name?

A. Joseph Apelman.

Q. What is your position or calling?

A. Special Agent, U. S. Department of Justice, Detroit, Michigan.

Q. Have you at any time come in contact with the alien before us?

A. Yes sir, on September 2d and 3rd.

Q. Did you question him at that time?

A. Yes sir, I did on both dates.

Q. The statement which this alien has sworn to, which I have already introduced as Exhibit B, is that correct?

A. Yes sir, that is correct and you can see that the alien made this statement from his own free will and he was warned that it might be used against him.

A. Yes sir, this mandate made out to him and identified
61 by him and with his signature attached.

Mandate reads as follows:

This is given to Comrade Mansevich who is appearing as a delegate from the Union of Russian Workers, Branch No. 3, Highland Park, Mich. to the Deputies of Russian Workers. This mandate being approved by the signature and seal. (Sgd.) Ludrishov, Secretary.

Alien's signature on side of paper.

(The above is a translation of mandate which was issued in Russian, same being translated by the interpreter.)

Q. When was this mandate issued?

A. There is no date on it, but it was taken from the Secretary of Russian Workers Deputies some time during 1919, and has been kept in our files up to this date.

Q. What does this mandate indicate?

A. It indicates that this alien Mansevich was authorized by the Union of Russian Workers, Highland Park, Michigan, to represent the Union of Russian Workers, Branch #3 at the Soviet of Russian Workers Deputies.

Q. Does that indicate that this man was an active member of this organization?

A. Yes sir, if he was a delegate, he would have to be an active member.

Q. This alien states that he now belongs to the Professional Union, what kind of an organization to your knowledge is this?

A. The Professional Union, according to advice received from the Department of Justice Headquarters at Washington is an under cover name for the Union of Russian Workers since the raid.

Q. Is this then an anarchistic organization?

A. Yes sir, it is only a different name for the Union of Russian Workers.

Q. Is there anything you wish — add to your testimony?

A. In regard to that publication "Americanski Izvestia," this paper is the official organ of the Professional Union. It has been
62 declared by our Department in Washington, an anarchistic paper.

Q. Is the publication "Wolno" an anarchistic paper?

A. The front cover says "Monthly organ of the anarchistic communist group." The contents are out and out anarchistic.

Inspector Gangewere to alien: The stenographer will now read and the interpreter will translate to you the testimony just offered by Mr. Joseph Apelman, and you will be given an opportunity to question this witness if you so desire.

(Testimony of above named witness read by stenographer and translated by interpreter.)

I will now introduce this mandate above referred to as Exhibit "E."

Q. Do you believe that the Government of the United States is a Government for the capitalists only?

A. Previous to my arrest, I was working, paying my taxes and buying my bread, now that I am arrested and oppressed, I do not believe the Government is for the working man.

Q. Do you believe in government of any kind?

A. Yes.

Q. What kind of government do you believe in?

A. My idea of government is not to kill people but to teach people.

Q. Is the Government of the United States such a Government?

A. The American Government is not such a Government, according to my idea, it does not teach, it does the other, it kills, not bodily but morally as in my case, now I am under arrest, everything taken away, naturally there is no hope for me in living.

Q. Do you believe in any kind of Government as consti-
63 tuted today or do you believe in that kind of government as advocated by the Union of Russian Workers?

A. I have nothing against the present Government, as long as I can work, pay my taxes and make my living, but if there should be some future Government, I will agree with it.

In addition to the charges already contained in the warrant of arrest you are also charged with being an alien who believes in, advises, advocates, or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character, and that he is a member of or affiliated with an organization, association, society, or group that advises, advocates, or teaches opposition to o-r organized government, and that he is a member of or affiliated with an organization, association, society, or group that believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States or of all forms of law.

You are now given an opportunity to defend yourself on these additional charges, do you now wish to engage counsel?

A. If I had any means, I would certainly hire one. I have no means now to buy my bread leave alone hire an attorney.

Q. Are you ready to proceed with this hearing?

A. Yes.

Q. Have you anything to say in regard to these additional charges?

A. Only this, that these additional charges may be preferred against me, but I think I am not guilty of them.

64 Q. Have you any property in the United States?

A. My house, I have about $1,400 or $1,500 paid in on it, which includes principal and interest.

Q. Is your house furnished?

A. Yes.

Q. Have you any money in the bank.

A. No.

Q. Have you a Russian passport?

A. Yes.

Q. Have you any further evidence to present to show cause why you should not be deported?

A. According to my laboring in the United States, and according to my honest living, I don't think I deserve to be deported. I deserve to be permitted to stay here. I have always led a moral life in the United States, I have my first papers. I attend Church and was married in Church, and my all round life was good and honest according to the laws of the United States.

Q. Were you ever arrested before?
A. No.
Q. Ever a public charge at any time?
A. No.
Q. In case you are ordered deported, do you wish to take your wife and children with you?
A. In case I am ordered deported, in view of the way conditions are at the present time, I would like to go myself first and see how things are there and probably send for them later.
Q. Have you anything further to add to your testimony?
A. In case the final decision in Washington is that I am to be deported, I would like to ask the Government to let me go myself of my own free will and pay my own expenses, so that nothing of this shameful record would be brought with me to my country.
Q. In the event you are permitted to go voluntarily, do you wish to take your family with you?
A. I would like to take my family, but I don't think I can,
65 because winter is coming, but in spring I would take her over.

Hearing closed.

Disposition.

Alien released on $1,000 bond.

Description.

5′ 6″; medium complexion; brown hair; blue eyes.

Exhibits.

A. Copy of telegraphic Warrant of Arrest.
B. Statement of alien before Agent Apelman of the Department of Justice.
C. Copy of Anarchistic Publication "Wolno."
D. Copy of statement of alien before Inspector Gangewere.
E. Copy of Mandate issued to alien by Secretary of the Union of Russian Workers.

66 *Passport.*

Passport for this alien can be secured at Detroit.

Findings.

From the foregoing evidence and exhibits, I, Robert W. Gangewere the duly authorized examining officer in this case do find the following facts:

That Nicolai Mansevich (Nickolay Mansewich) is an alien namely, a citizen of Poland, married, wife and three children, residing in the United States; that he entered the United States in April, 1911, at the port of New York, S.S. "Carpathia," and has resided

in the United States continuously since that date; on September 2nd, 1921, three packages of the Anarchist publication "Volna," issues #18, about 800 copies in all, were being delivered to this man's address, one package of same being found in the attic of the house by an Agent of the Department of Justice. Evidence shows that this alien had given his permission to have these packages brought to his house and that he did not know the nature of the contents of the packages is not believed; that these papers were to be distributed is quite certain and from the arrangement of the attic of this alien's home, it would appear that meetings were being held or were to be held there and that these papers were brought there because of this fact.

The alien admits that he is familiar with this publication and that he has been reading same from the first number. He also admits in his preliminary statement that he has been keeping this publication at his house for safekeeping for his comrades and judging from the evidence produced it is more than likely that this alien attended to the distribution of this publication. The evi-

67 dence clearly shows that the alien is well versed in the anarchistic doctrines and believes in same. Alien does not believe in law and believes in the overthrow of the United States Government by force or violence and the killing of Government officials.

Evidence further shows that this alien has been an active member of the Union of Russian Workers, and is now a member of the Professional Union. From the evidence at hand, it appears that the Professional Union and the Union of Russian Workers are one and the same, the latter organization being well known to be an anarchist organization which teaches opposition to all organized Government and advocates the overthrow by force or violence of the Government of the United States and all forms of law.

The deportation of this alien is respectfully recommended. Robert W. Gangewere, U. S. Immigrant Inspector. H. A.

68 **Telegraphic Warrant of Arrest.**

Copy.

Washington, D. C.

Immigration Service, Detroit, Michigan:

Arrow Nickolay Mansewich Anarch Anastate Disbelieve Anarchize Relay ten. E. J. Henning, Asst. Secy.

69 **Affidavit of Joseph S. Apelman.**

STATE OF MICHIGAN,
County of Wayne, ss:

I, Joseph S. Apelman, of lawful age, being duly sworn according to law, deposes and say:

1. I am a Special Agent of the Department of Justice of the United States, in charge of the Radical Investigative Department, of the Bureau of Investigation, in the City of Detroit.

2. That in the course of my personal investigations and those of other officers and employees of the Bureau of Investigation, Department of Justice, in this city, and of confidential informants under my immediate supervision and direction, I am informed and verily believe the following facts to be true:

(*a*) That Nickolay Mansewich is an alien, subject of Poland;

(*b*) That the alien, Nickolay Mansewich, is an active member of and affiliated with the Union of Russian Workers.

(*c*) That the Union of Russian Workers is an organization which advocates the overthrow by force or violence of the Government of the United States.

(*d*) That the alien, Nickolay Mansewich, is an Anarchist; that he believes in and advocates the overthrow by force or violence of the Government of the United States. (Sgd.) Joseph S. Apelman.

Subscribed and sworn to before me this third day of September, 1921. (Sgd.) Thomas C. Wilcox, Notary Public, Wayne County, Michigan. My commission expires December 15, 1923.

70 **Exhibit B to Return.**

September 3rd, 1921.

NIKOLAY MANSEWICH, alien anarchist, being first duly sworn, according to law, deposes and says, in answer to questions put to *me* by Agent J. S. Apelman in presence of Stenographer Elsie Gilliam:

Q. What is your correct name?
A. Nikolay Mansewich.
Q. What other names have you gone by?
A. None.
Q. Where do you live?
A. 11569 Nagel St., Hamtramck, Mich.
Q. What is your occupation?
A. Crank Shaft finisher employed by Ford Motor Co., Dept. 498, Badge #C2486.
Q. Where were you born?
A. Ciechaniny, Gubernia Grodno, Poland formerly Russia.
Q. What is the date of your birth?
A. May 2, 1886.
Q. When did you come to the United States?
A. I do not remember exactly, I believe it was either in 1911 or 1912; on or about April 6th.
Q. On what Steamship did you come and where did you land?
A. S. S. Carpathia, at New York, N. Y.
Q. Have you taken out any American citizenship papers?
A. On or about October 15th, 1915. First papers in the U. S. District Court, Detroit.

Q. Were you ever arrested before?
A. Never.
Q. To what party or organization do you belong?
A. I am a member of the Professional Union.
Q. How long have you been a member of that organization?
A. 8 months.
Q. To what organization did you belong before?
A. In 1919 I was a member of the Union of Russian Workers, Branch #3, Detroit.
Q. Have you attended meetings of the Union of Russian Workers?
A. Yes, I have attended.
Q. When did you attend a meeting of the Union of Russian Workers last time?
A. About a year and a half ago.
Q. I am going to show you a mandate issued by the Union of Russian Workers, Highland Park, Mich., authorizing you to represent that organization at the Soviet of Workers Deputies and will ask you whether you have seen that mandate before?
A. Yes, I have seen it.
Q. Was that mandate issued to you?
A. Yes, it was issued to me.
Q. Did you represent the Union of Russian Workers, Highland Park?
A. Yes, I was a delegate from that organization.
Q. When was that?
A. In 1919.
Q. You told me yesterday that a mandate similar to the one I am showing you now was issued to you about two weeks ago.
A. Yes, I have a similar mandate from the Profession- Union at home.
Q. Do you believe in the doctrines and principles of the Union of Russian Workers?
A. Yes.
Q. I am going to show you a Russian magazine entitled "Wolna," the monthly organ of the Federation of the Anarch*a*nist Groups and I am going to ask you whether you have seen that magazine before?
A. Yes.
Q. Where and when did you see it?
A. I have been buying that paper right along.
Q. Where did you buy it?
A. I am buying that paper at the meetings of the Professional Union.
Q. Have you any copies of Wolna at your house?
A. Yes.
Q. How many copies?
A. I do not know how many I have altogether, there are about 13 or 15 copies that I have purchases from my own money at the meetings. Besides that there is a quantity of about 100 in my house, the comrades have left for safe keeping.

Q. Do you read that paper regularly and do you believe in the doctrines it propounds?

A. Yes, I do.

71 Q. How will you explain the delivery of 3 packages containing about 800 copies of Wolna, the organ of the Federation of the Anarchist Communist Groups by a truckman to your house on September 2nd?

A. On September 1st, the day before yesterday, I met a man whom I have known from the Union of Russian Workers, and he asked me whether he could not have some literature sent to my house and he took my name and address, and I gave him permission to send that literature to the house.

Q. Did the man explain to you what kind of literature it would be?

A. He did not but it was understood that it would be Union of Russian Workers' literature.

Q. How much dues do you pay in the Professional Union?

A. 25¢ a month.

Q. Do you buy and read Americanskye Izwestia?

A. Yes, I do.

Q. Do you make any other contributions for Americanskye Izwestia?

A. Yes.

Q. Are you making this statement of your own free will without any threats or promises having been made to you by any one?

A. Yes. (Sgd.) Nikolay Mansewich.

Subscribed & sworn to before me this 3rd — of September, 1921. (Sgd.) Joseph S. Apelman, Notary Public, Wayne County.

72 **Exhibit D to Return.**

2230/48.

U. S. Immigration Service.

Detroit, Michigan, September 3, 1921.

Sworn Statement of Nikolay Mansewich, Taken by Immigrant Inspector Robert W. Gangewere, Joseph S. Apelman Acting as Interpreter.

Q. What is your correct name?

A. Nikolay Mansewich.

Q. How old are you?

A. 35 years.

Q. Where were you born?

A. Cichaniny, Grodno, Russia, now Poland.

Q. How long have you resided in the United States?

A. About ten years. I got off the ship in New York in 1911 or

1912, but I think it was 1911. It was April 6th as near as I remember.

Q. What was the name of the ship?

A. Carpartina.

Q. Did you ever live in Canada?

A. No.

Q. Ever go to Canada?

A. No.

Q. Have you taken out any papers in the United States?

A. First.

Q. Did you register for the draft?

A. Yes.

Q. Are you married?

A. Yes.

Q. What is your wife's name and address?

A. Helen. She lives with me here in Detroit at 11569 Nagel St., Hamtramck.

Q. Have you any children?

A. Yes, three.

Q. What are their names and ages?

A. Annie, age 6½; Mary, 5½; Jennie, 3.

Q. Where were your children born?

A. In Detroit.

Q. How long has your wife been in the United States?

A. Eight years.

Q. Where do you work?

A. Ford Motor Company, Badge C-2486.

Q. Have you any property?

A. I bought a house. I have paid about $1,000 on it.

Q. Have you seen this paper before (showing him copy of Volna #18)?

A. Yes.

Q. Have you any of these papers at your house?

A. Yes.

Q. How many of them have you at your house?

A. About 13 I bought myself.

Q. Have you any others?

A. Yes, maybe 100 or 150. I have them at my house for safe keeping for the comrades.

Q. Of what issues are these papers?

A. Different issues.

Q. You made a statement today before Agent Apelman. Is everything in that statement true?

A. Yes.

Q. Did you have meetings at your house?

A. No.

Q. Did you intend to take those packages of the Volna to the meeting hall for distribution?

A. No, but the man who had them sent to my house was going to take them there.

Q. How long have you been reading Volna?

A. I have had all issues from 1 to 19, with the exception of about three issues.

Q. Is the Volna the Union of Russian Workers paper?

A. Of course.

Q. Do you believe what this paper says?

A. Yes.

Q. Did you give any of these papers away to your friends?

A. I bought it openly, but I was very careful not to give it to anybody to read unless I knew he was a comrade.

Q. What do you mean by comrade; do you mean a comrade of the Union of Russian Workers?

A, In the present society you call each other brothers. We of the future society call ourselves comrades.

Q. What do you mean by future society?

A. According to the Anarchist Communist doctrines, under the present system there is only justice for the bosses. According to the same doctrine in the future society there will be justice for all.

Q. Under the future society then we would need no government?

A. Under the present system government is needed, but under the future society no government is needed.

73 Q. Then you do not believe in government?

A. I do not believe in any government. I believe in schools.

Q. What do you mean by schools?

A. I believe in free thought.

Q. Do you believe in law as we have it at the present time?

A. No.

Q. Do you think the government of the United States should be overthrown?

A. The American government deserves the same treatment as the Czar's.

Q. What, in your opinion, would be the proper way to overthrow the government of the United States?

A. It all will come itself. I believe in armed revolution, force against force.

Q. Do you believe in killing government officers to remove them from office?

A. Yes.

Q. Do you attend meetings of the Union of Russian Workers now?

A. No.

Q. To what organizations do you belong now?

A. Professional Union.

Q. Is this the same kind of an organization as the Union of Russian Workers?

A. No.

Q. Do the same men that belonged to the Union of Russian Workers belong to this Union?

A. No.

Q. Does the Professional Union distribute Volna at their meetings?

A. Yes, I used to bring it there.

Q. Is there anybody else but your own family living at your house?

A. No. (Sgd.) Robert W. Gangewere, U. S. Immigrant Inspector.

74 **Exhibit E to Return.**

Translation of Mandate Issued to Alien Nicolai Mansewich.

This is given to Comrade Mansewich, who is appearing as a delegate from the Union of Russian Workers, Branch No. 3, Highland Park, Michigan, to the Deputies of Russian Workers. This Mandate being approved by the signature and seal. (Sgd.) Secretary Ludrishov. (Seal.) (Sgd.) Nikolay Mancevich.

75 **Exhibit H to Return.**

Friendly Agreement Between the Unions of Russian Workers of the United States and Canada Joined Into a Federation.

Purpose of Federation.

(1) United organizations of Russian Workers in the United States and Canada for the united fight against capital and authority.

(2) Support of revolutionary outbreak workers in Russia.

(3) Support of revolutionary outbreak workers in America.

(4) Moral and material support of the Federation Organ "Nabat" (to sound an alarm on a drum).

(5) Creation of organizations where they do not exist, and support of those in existence.

Relations Between Organizations.

A member of one Union will be considered equal in right with any member of any other Union of the Federation.

All organizations which entered the Federation will have full autonomy, and show each other wide, material and moral support.

Resources of the Federation.

The resources of the Federation will consist of separation of ten cents from monthly payments of members of the organizations and of free donations.

Management of the Federation.

To carry on the business of the Federation, there will be elected a Secretary and Treasurer, who will conduct all the correspondence in connection with the work of the Federation.

For the Information of the Members of the Organization.

From the dues of the members, there will be deducted
76 monthly from each — into the fund of the printing machine and 5 cents into the Federation Fund from the 10 cents.

The Fundamental Principles of the Federation.

The present Society is divided into two opposing classes; on one side the unprovided laborers and peasants who have created the world's riches with their labor; on the other side the rich men who grabbed all those riches into their hands.

Many times has the unprovided class arisen against the parasitic rich and their trusty servant and defender, the Government, for the purpose of gaining full liberation from the yoke of capital and authority, but each time suffers defeat because it does not know clearly the ultimate purpose and the means whereby to gain it because a tool in the hands of its enemies.

The strife between those classes is continuing also at the present time, and will be finished only when the working masses, organized into a class, will understand their true interest, and will take possession by means of forceful revolution of all the wealth of the world.

Having accomplished such transposition, and having destroyed at the same time all institutions of Government and authority, the unprovided classes will have to announce a society of free producers who will be anxious to satisfy the needs of every separate individual which later, in turn, will give to the society its labor and knowledge.

To reach our purpose, we, first of all, prove the necessity of creating a wide class of revolutionary organization of toilers, which, leading a direct fight with all the institutions of capital and authority, must teach the laboring class initiative and self-action in
77 all its undertakings, developing within it in this manner, a recognition of the necessity of unavoidability of a universal strike—Social Revolution.

Organizing, therefore, into Unions of Russian Workers,

We, as a part of the toilers of the whole world, will strive in all our future work that the principles underlined the Federation will always be a leading thread in the matter of organization of the wide masses of Russian Immigrants for the speediest liberation of Russia and of humanity.

78 United States District Court, Southern District of New York.

[Title omitted.]

Stipulation in re "Volna."

[Filed Nov, 3, 1922.]

It is hereby stipulated by and between the attorneys for the respective parties that

Whereas, a certain exhibit or magazine called Volna, Issue No. 18, printed in Russian, was made a part of the record in the deportation proceedings of the relator, and

Whereas, the following excerpts were translated into English and made part of the deportation proceedings, namely,

"taking part in the every-day fight of the laborer we will be able to direct the fight 'o ' general strike in one place or in the whole country or in the d and we will be able to prepare our comrades to the fight of the inevitable of the armed fight between the strikers and the employers' hired help called the army, police, militia and secret service, or in other words, to direct the strike to enter upon the road of revolution from the knowledge of the revolutionary workers and from the character and idea of the active minority in the midst, it will depend whether the general strike will turn into the road of social revolution or it will be stuck in the fight of the political parties for their own power."

Volna, No. 17:

"Anarchism means peace and happiness for all. Anarchists with pleasure would renounce of using force. In the present form, force is practiced by all, and we recommend the oppressed to use force against force and only against force as a necessary medium of defense."

79 Whereas, the return cites such extracts, it is therefore consented and agreed by and between the attorneys for the relator and the respondent that such extracts are correct translations and appear in the exhibit entitled Volna.

Dated, New York, November 3, 1922. Hale, Nelles and Shorr, Attorneys for Relator. William Hayward, Attorneys for Respondent.

[File endorsement omitted.]

80 **Warrant for Deportation.**

Bureau of Immigration Form 8 A.

United States of America,

Department of Labor.

Washington.

No. 55119/18.

To U. S. Commissioner of Immigration, Montreal, Canada, or to any Immigrant Inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Nikolay Mansevich, who landed at the port of New York, N. Y., on or about the 1st day of July, 1911, has been found in the United States in violation of the Act of October 16, 1918 as amended by the act of June 5, 1920, for the following among other reasons:

That he writes, publishes, or causes to be written or published, or knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or knowingly had in his possession for the purpose of circulation, distribution, publication, or display, written or printed matter, advising, advocating, or teaching the overthrow by force or violence of the Government of the United States or of all forms of law; that he is an alien anarchist; that he believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States or of all forms of law; and that he writes, publishes, or causes to be written or published, or who knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or who knowingly had in his possession for the purpose of circulation, distribution, publication or display, written or printed matter, advising, advocating, or teaching opposition to all organized government.

I, E. J. Henning, Assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation: "Expenses of Regulating Immigration, 1922." Pending further proceedings the alien may be released from custody upon furnishing satisfactory bond in the sum of $1,000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 6th day of September, 1921. Assistant Secretary of Labor. Incl. 433. RN.

81 **Correspondence.**

Department of Labor,

Immigration Service,

District No. 1.

District Headquarters, U. S. Commissioners of Immigration, Montreal, Canada.

Subdistrict: Detroit, Mich.

In answering refer to No. 2230/48.

March 7th, 1922.

U. S. Commissioner of Immigration, Montreal, Canada:

Referring to your file 11275/266, I beg to transmit herewith new hearing given before Immigrant Inspector Robert W. Gangewere in the case of Nicolai Mansevich in accordance with the Department's instructions.

Accompanying record will be found brief filed by Attorney Walter M. Nelson and three associates.

The delay in forwarding the record was caused by reason of the fact that the attorney's brief was not received until today.

The brief appears to be virtually an attack upon the integrity of the officials of the Department of Justice and of the Immigration Service at Detroit as well as upon the rules of the Department covering hearings in deportation proceedings. In the latter connection the inference found on page 2 of the brief to the effect that access to the rules and regulations of the Immigration Service had been denied the attorneys is incomprehensible as no attorney of record in the case has either in the present instance or upon any other occasion been refused access to office copies of the Immigration Laws. Besides the Department's pamphlet is readily accessible in numerous libraries in the City of Detroit. Furthermore, the attorneys
82 representing the alien Nicolai Mansevich have handled many immigration cases where deportation proceedings were in process and have had abundant opportunity to familiarize themselves with the Departmental rules.

The charge made on page 3 of the brief that it has been the practice of the Inspector in Charge to interfere in the introduction of testimony is an outrageous falsehood and is impossible of substantiation. The charge made is evidently based upon the statement of the Inspector in Charge during the unmerciful grilling of the witness Mike Slaszek in an attempt by counsel to ascertain the manner of his appearance at this office. (Page 11 of brief and Page 18 of hearing). An examination of the hearing immediately following my furnishing counsel with the information he was seeking will disclose that my statement in no manner deterred or influenced

counsel in the further examination of the witness along the same lines. (Page 18 of hearing). The fact is as will be readily apparent from reading the record, counsel for the alien were exasperated at their failure to succeed in breaking down the testimony of the witness to the effect that he had purchased anarchistic literature from the alien Nicolai Mansevich. It must be clearly apparent to any one reading the record that Attorney Nelson was accorded the utmost latitude and freedom, not only for the introduction of evidence, but in the cross-examination of witnesses.

With reference to the witness Mike Slaszek, I wish to make the positive statement that this office has no evidence whatever to the effect that the witness referred to was a "fixed" witness. His appearance at the U. S. Immigration Office was totally without prior announcement. He was accompanied there by a well known
83 and trusted confidential informant who has upon several occasions furnished reliable information both to the Department of Justice and to the office of the Immigration Service at Detroit. After due consideration and conference with Inspector Gangewere it was deemed our duty to ask the witness to testify at the hearing and certainly his testimony as to the purchase of anarchistic literature from the alien Mansevich stands unimpeached and the most extended effort made by counsel to discredit it has been without success. It is true that counsel in his brief lays considerable stress upon the inability of the witness Mike Slaszek to read Russian. As a matter of fact the record only shows that the witness claimed he could read Russian "a little bit". (Page 15 of hearing). The witness further explains, in response to question from counsel, that he could read a little Ukranian and that has the same alphabet as Russian. The witness's familiarity with the Russian alphabet was substantiated by the interpreter. (Page 16 of hearing).

Counsel for the alien on page 3 of brief, makes the charge that the record is not true due to stenographer not being qualified as a court reporter. Counsel fails, however, in a single instance, to substantiate his charge that the record is not true and gives every indication of his willingness to rely upon the correctness of the record insofar as it contains testimony in favor of the alien. Furthermore, the determination of the stenographer to record correctly each and every question and answer is confirmed by counsel's statement that the stenographer in numerous instances stopped the witnesses in order that he might accurately record each word. The efficiency
84 and reliability of the stenographer is well established in the fact that in the taking of numerous hearings prior to the present instance his transcripts have been accepted without criticism by several of the prominent attorneys in Detroit, notably Mr. Fred M. Butzel, former Assistant U. S. District Attorney A. C. Baird, former Circuit Court Judge William Lock, and former Assistant County Attorney Chester A. Ferris. In this connection attention is invited to the record of hearing taken in the case of William Kravchuk, Montreal, File #11085/131–A, and Bureau File No. 55009/57 in which case the alien was represented by Messrs. Nelson & Diehl who now represent the alien in the present instance. It is noteworthy that in the Karavchuk hearing no criticism whatever

was made of the accuracy of the completeness of the stenographer's transcript, the stenographer being the same person that took the case at hand. Certainly in the instant case the completeness of the transcript is self evident so far as the testimony offered is concerned.

The charge made by counsel on page 4 of brief that the Inspector in Charge permits the Agents of the Department of Justice to dominate hearings is another falsification against which I desire to enter a most vigorous and forceful denial. The fact is that the local agents of the Department of Justice at Detroit have repeatedly demonstrated their ability to secure and present to the Immigration Service in an orderly manner evidence showing that aliens of the Anarchistic Class are subjects for deportation proceedings. The recognition given the officials referred to by this Service has been no more than they are properly entitled to. Their presence at the hearing is a necessity and is in accordance with instructions
85 given them by their superior officers. While examining inspectors conducting these hearings have been receptive of suggestions offered by the Department of Justice officials, the actual control and procedure of the hearings, without exception, has been in the hands of the Immigration official conducting the same.

The attack made on the integrity and honesty of Special Agent Joseph Apelman (page 7 of brief is an extremely poor taste when not supported by a scintilla of evidence corroborating the allegation. I feel quite certain that any investigation of the character, reliability and fairness of Special Agent Apelman would utterly fail in giving any credence to the charge of dishonesty made by the attorneys for the alien. I cannot but regard this charge against Special Agent Apelman as entirely unjustifiable and in all probability actuated by personal animosity.

The brief submitted seeks to embarrass this Service through failure to introduce the record of the previous hearing upon which warrant for the deportation of the alien issued and infers that our reason for not introducing the record was that the "Department well knew the weakness of the original case." The record of the previous hearing was not introduced for the reason that petition of counsel for the alien for stay of deportation and rehearing contained serious charges against the ability and integrity of Rev. D. C. Darin, who acted as interpreter in the first hearing. Inasmuch as the Department had directed that a new hearing be given it was deemed advisable, in fairness to the alien, to disregard the first hearing entirely. In this connection it is important to know how completely the interpreter used in the second hearing was examined as to his qualifica-
86 tions and how thoroughly he demonstrated his ability to render a literal interpretation and translation. At the conclusion of the hearing the attorneys recorded their complete satisfaction with the interpreter.

The criticism of the officials of this Service in not permitting the hearing to proceed in February 18th with Miss Anna Terletsky acting as interpreter is totally without justification. While this interpreter was permitted to be present at the adjourned hearing to check up on the accuracy and fairness of the official interpreter, we were, nevertheless, not justified in depending upon her as the inter-

preter of record for the reason that her incompetency was self-evident. Her discontinuance as alleged by the attorneys for the alien was not out of deference to Special Agent Apelman as her lack of competency was quite apparent to the examining inspector even though unable to understand and speak Russian himself. Furthermore, subsequent to the starting of the hearing it was discussed that this woman had previously written this office protesting against the deportation of this alien.

On page 4 of the brief it is alleged that additional charges against the alien were made before the conclusion of the hearing. This criticism is plainly disproven by the record itself, the additional charges referred to having been presented by the examining inspector long before the hearing was ended and at no time was a conclusion of the hearing urged or forced by the Government. Quite to the contrary the attorneys for the alien were permitted to continue the hearing without any limitation whatever and had the attorneys requested an adjournment in order that they might have an opportunity to secure evidence to refute the added charges
87 such request would have been readily granted. The record at its conclusion shows that the hearing was not terminated until inquiry was made of counsel for the alien as to whether they had any further evidence to present, the reply to which was in the negative.

From a careful study of the record of new hearing the following facts are established:

1. The alien, Nicolai Mansevich, with full knowledge of its character, caused the delivery at his residence, after writing with his own hand his name and address, a large quantity of printed literature, the nature of which comes clearly within the purview of the Anarchistic Law. (Testimony of Agents Apelman and Wilcox, and drayman Hyman Seid, also exhibits B and E, and C, also testimony of alien on page 8 of hearing).

2. That Nicolai Mansevich is an alien anarchist. In addition to other evidence establishing this fact there stands out forcibly the testimony of the alien himself while being questioned by his attorney, who asked the alien:

"Q. Do you believe all that Volna says?

"A. Yes, I believe it, but I don't perform it. I believe in what is written in it."

The attorney apparently shocked by the alien's admissions again propounded the question: "You believe in what Volna says", and the alien again replied in the affirmative. The record shows clearly that the Volna advocates Anarchy within the meaning of the Anarchistic Act. (See Exhibits B and E, and testimony of Agent Apelman and testimony of alien on page 21 of hearing.)

3. That he believes in the overthrow by force or violence of the Government of the United States or all forms of law. This
88 is proven by statements made before Special Agent Apelman

and Inspector Gangewere covered by Exhibits B and E, wherein the alien established his membership in the Professional Union, which is anomalous to the Union of Austrian Workers which organization has been classed by the Department as an anarchistic organization, membership of which upon the part of any alien classifies him as an anarchist. Membership in the Professional Union is also indicated in the testimony of the alien on pages 22 and 23 of the hearing. Further evidence of membership is contained in the so-called mandate, Exhibit "F", which came into the possession of the Department of Justice officials at the hands of the Secretary of the Hamtramck organization of the Union of Russian Workers in 1919, at which time the secretary of that organization was taken into custody, and subsequently deported. (See testimony of Agent Apelman, page 10 of hearing.) While the alien admits the authenticity of his signature found on this mandate, he makes the claim that the same was written on the mandate under stress at the instance of the Department of Justice officials. It is significant, however, that signatures of the alien on this document materially differs in style from signature on affidavit before Agent Apelman notwithstanding the alien's claim that both signatures were written the same date. It seems incredible that the alien would make use of two styles of signature at one time. It is not strange, however, that during practically a period of two years that his style of writing should differ.

4. That the alien Nicolai Mansevich knowingly caused to be circulated and distributed anarchistic literature. This is substantiated by the evidence of his causing to be delivered a large quantity
89 of such literature at his residence and further, according to the testimony of the witness Mike Slaszek, the alien publicly sold such literature. (See Exhibits B and E and testimony of Mike Slaszek beginning with page 15).

5. That Nicolai Mansevich believes in the killing of government officers because of their official character. (Exhibits B and E and testimony of Agent Apelman on page 9 of hearing.)

In conclusion I beg to concur fully in the findings of the examining inspector and recommend the deportation of the alien Nicolai Mansevich. I believe the evidence fully justifies such recommendation. The alien has had a fair hearing and a full opportunity to defend himself against the charges. P. F. Prentis, Inspector in charge. PLP:HA.

90 U. S. Department of Labor,
Bureau of Immigration,
Washington.

Address reply to Commissioner General of Immigration and refer to No. —.

June 28, 1922.

Messrs. Hale, Nelles and Shorr, 80 East 11th St., New York, N. Y.

Sirs: In reply to your letter the Bureau has to advise that natives of the region designated as the "Polish Occupation Territory" are not included within the Polish quota, but commencing with July 1 will be included within a quota allotted to what will be termed the "Pinsk Region." Respectfully, I. F. Wixon, Assistant Commissioner General. MAC/CS.

91 Department of State,
Washington.

In reply refer to WE.

July 11, 1922.

McElroy and Reid, Westory Building, Washington, D. C.

Gentlemen: The receipt is acknowledged of your letter of July 6, 1922, relating to the deportation of Nicholai Mensevich and requesting certain information concerning the political status of the Province of Grodno.

The Government of the United States has recognized Poland as a sovereign state. This action, however, did not involve the recognition of her territorial boundaries. Without undertaking to pass upon the status of the territory east of the Curzon Line, in which the province in question lies, you are informed that this Department understands that this territory is now under Polish administration. I am, Gentlemen, Your obedient servant, Charles E. Hughes.

92 Received Jul. 12, 1922. Referred to Mr. Thomas. Filed 27-48. Hop. Corp. B/136. J. C. S., Jr. July 12, 1922.

Cat. hc.

Address official communications to the Secretary of State, Washington, D. C.
In reply refer to WE.

Department of State,

Washington.

July 11, 1922.

Mr. William Hayward, United States Attorney, New York City.

SIR: Reference is made to your letter of June 30, 1922, addresed to the Attorney General, relating to the deportation of Nicholai Mensevich, and requesting certain information concerning the political status of the town of Tychny or Cichaniny. A copy of your letter has been referred to this Department, for its consideration.

In reply you are informed that the towns of Tychny and Cichaniny appear to be the same. The Government of the United States has recognized Poland as a sovereign state. This action, however, did not involve the recognition of her territorial boundaries. Without undertaking to pass upon the status of the territory east
93 of the Curzon Line, in which this town lies, you are informed that this Department understands that this territory is now under Polish administration. I am, Sir, Your obedient servant, Charles E. Hughes.

94 United States District Court, Southern District of New York.

[Title omitted.]

Traverse to Writ.

[Filed July 20, 1922.]

The relator above named by way of traverse to the return herein alleges upon information and belief:

First. Hereby realleges and reincorporates each and every allegation contained in his petition herein verified June 9, 1922.

Second. On September 2, 1921, and theretofore and continually since, Section 20 of the Immigration Law with respect to deportation proceedings contain the following provisions:

"Sec. 20. That the deportation of aliens provided for in this act shall, at the option of the Secretary of Labor, be to the country whence they came or to the foreign port at which such aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which they embarked for such territory; or, if such aliens entered foreign contiguous territory from the United States and later entered the United States, or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their reentry, or imposes any condition upon permitting reentry, then to the country of
95 which such aliens are subjects or citizens, or to the country in which they resided prior to entering the country from which they entered the United States."

Third. The relator was born in Russia in the year 1886 and left Russia for the United States in the year 1911 or 1912, arriving in the United States the same year from Russia, of which country he is a citizen and subject.

Fourth. On or about April 11, 1922, and at the time the writ of habeas corpus herein was applied for and issued and continually since, the Secretary of Labor by an order directed the deportation of the relator to Poland, and the relator is imprisoned and detained in the custody of the respondent for deportation to Poland, a country other than Russia, whence the relator came or from which he entered the United States or of which he is a citizen or subject or in which he resided prior to his entry into the United States.

Fifth. Relator alleges upon information and belief that said return and annexed record does not state facts sufficient to warrant the continuance of the relator's detention.

Wherefore, the relator prays that he may have his liberty. Nicolai Mensevich, Relator. Hale, Nelles & Shorr, Attorneys for the Relator. Office & P. O. Address 80 East 11th Street, Borough of Manhattan, City of New York. Witness: F. J. Block.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Nicolai Mensevich, do solemnly swear that I am the petitioner above named, that I have heard read the foregoing traverse
96 and know the contents thereof and that the same is true to the best of my knowledge, information and belief. Nicolai Mensevich.

Sworn to before me this 12 day of July, 1922. Frederick J. Block, Notary Public, Richmond County. Certificate filed in N. Y. County.

[File endorsement omitted.]

97 United States District Court, Southern District of New York.

[Title omitted.]

Requests to Take Judicial Notice.

[Filed July 20, 1922.]

The Court will take judicial notice of the following:

First. That Poland was not a sovereign state and was not a country within the meaning of Section 20 of the Immigration Laws in the years 1911 and 1912, and the Province of Grodno was part of Russia.

Allowed. A. N. Hand, D. J.

Second. That part of Russia known as the Polish Occupation, embracing the Province of Grodno, is not recognized by the United

States Government as a part of Poland, but is recognized as a part of Russia.

Denied. A. N. Hand, D. J.

Third. That the Department of Labor in determining the quota under the Act approved May 19, 1921, classes any alien coming from the territory known as Polish Occupation, embracing Grodno, as a Russian and not as a Pole.

Denied. A. N. Hand, D. J.

Respectfully submitted, Hale, Nelles & Shorr, Attorneys for Relator, Office & P. O. Address 80 East 11th Street, Borough of Manhattan, City of New York.

The above facts are judicially noticed.
Dated, July 20, 1922. —— ——, U. S. D. J.

[File endorsement omitted.]

98 United States District Court, Southern District of New York.

[Title omitted.]

Notice.

SIR: Please take notice that the within order will be presented for settlement and signature herein to Honorable Augustus N. Hand, one of the Judges of the within named court at the Clerk's office, Room 349, in the Old Post Office Building in the Borough of Manhattan, City, County and Southern District of New York, on the 1 day of August, 1922, at 10:30 A. M.

Dated, New York, July 28, 1922. Yours etc., Hale, Nelles & Shorr, Attorneys for Relator, Office & P. O. Address 80 East 11th Street, Borough of Manhattan, City of New York. To William Hayward, Esq., United States Attorney for the Southern District of New York, Attorney for Respondent.

99 At a Special Term of the United States District Court for the Southern District of New York Held in the United States Court and Post Office Building, Borough of Manhattan, City of New York, on the First Day of August, 1922.

Present: Hon. Augustus N. Hand, United States District Judge.

[Title omitted.]

Order Dismissing Writ.

[Filed Aug. 1, 1922.]

The petition and writ of habeas corpus for the release of the above named relator having come on to be heard before this court on the 20th day of July, 1922, and the respondent having filed a return to said petition and writ and the relator having filed a traverse to the return and the application having duly come on to be heard before this court, and after hearing Messrs. Hale, Nelles & Shorr, attorneys for the relator, by Walter Nelles, and Isaac Shorr, Esqs., of counsel, in support thereof, and James C. Thomas, Jr., Esq., Assistant United States Attorney, in opposition thereof, it is,

Ordered that the said writ of habeas corpus be and the same hereby is dismissed, and the relator be and he hereby is remanded to the custody of the United States Commissioner of Immigration at the Port of New York.

99½ And it is further ordered that the relator, Nicolai Mensevich, be discharged into his own custody upon furnishing a bond for his appearance in the sum of Five Hundred — to be approved by the court and by filing a petition for appeal, assignment of errors, order allowing the appeal, and citation within ten days from the entry hereof pending the determination of the appeal herein to the United States Supreme Court;

And it is further ordered that upon perfecting the appeal as hereinbefore provided, all proceedings on the part of the Commissioner of Immigration at the Port of New York be and the same hereby are stayed, and that the Commissioner of Immigration at the Port of New York be and hereby is stayed from deporting the said Nicolai Mansevich until further order of this court. Augustus N. Hand, United States District Judge.

[File endorsement omitted.]

100 United States District Court, Southern District of New York.

[Title omitted.]

Assignment of Errors.

[Filed Aug. 4, 1922.]

Now comes the relator above named and files the following assignment of errors upon which he will rely upon his prosecution of an appeal from the order of this court made herein on the 2 day of August, 1922, alleging,

First. That the United States District Court for the Southern District of New York erred in dismissing the writ of habeas corpus herein.

Second. That the said court erred in not holding that in and by the proceedings in the Department of Labor as shown by the record herein, the relator was deprived of life, liberty and property without due process of law contrary to Article 5 of Amendments to the Constitution of the United States.

Third. That said court erred in not holding that the detention of the relator by the respondent at the time the writ of habeas corpus herein was prayed for and obtained deprived him of rights secured under Article 4 of Amendments to the Constitution of the United States providing that the right of the people to be secure in their persons, houses, papers and effects against unreasonable
101 searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath of affirmation and particularly describing the place to be searched and the persons or things to be seized.

Fourth. That said court erred in not holding that the detention of the relator by the respondent at the time the writ of habeas corpus herein was prayed for and obtained deprived him of rights secured under Article 5 of Amendments to the Constitution of the United States providing that no person shall be deprived of life, liberty or property without due process of law.

Fifth. That said court erred in not holding that the detention of the relator by the respondent at the time the writ of habeas corpus herein was prayed for and obtained deprived him of rights secured under Article 13 of Amendments to the Constitution of the United States providing that neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Sixth. That the court erred in holding that the Immigration Laws with respect to deportation proceedings appearing in the record herein were complied with in the case of the relator.

Seventh. That said court erred in not holding that the order of deportation of the relator to Poland at the time the writ of habeas

corpus herein was prayed for and obtained violated Section 20 of the Immigration Laws.

Eighth. That said court erred in not holding that the part of Russia that lies east of the Kurzon Line and known as Polish Occupation, embracing the Province of Grodno, is not recognized by the United States Government as a part of Poland but is recognized as a part of Russia.

102 Ninth. That said court erred in not holding that the warrant of arrest of the relator was based upon evasion and disregard by the United States Department of Labor of the Constitution and laws of the United States and the rules of said Department in such case made and provided.

Tenth. That said court erred in not holding that the warrant of deportation of the relator was based upon evasion and disregard by the United States Department of Labor of the Constitution and Laws of the United States and of the rules of said Department in such case made and provided.

Wherefore, the relator prays that said order be reversed and that such other and further orders, directions and decrees be made as shall be in accordance with law.

Dated, New York, August 2, 1922. Respectfully submitted, Nicolai Mansevich, Relator. Hale, Nelles & Shorr, Attorneys for Relator, 80 East 11th Street New York City.

[File endorsement omitted.]

103 United States District Court, Southern District of New York.

[Title omitted.]

Petition for Appeal.

[Filed Aug. 4, 1922.]

To the Honorable the Judges of the United States District Court for the Southern District of New York:

Now comes the relator, Nicolai Mensevich, by Hale, Nelles & Shorr, his attorneys, and respectfully shows that an order was made and filed in this court on the 2nd day of August, 1922, dismissing the writ of habeas corpus herein and remanding him to the custody of the United States Commissioner of Immigration at the Port of New York and that in and by said order manifest error was committed, as appears from your petitioner's assignment of errors filed herein, and your petitioner appeals to the Supreme Court of the United States from said order and prays this his appeal be allowed and a citation issued in accordance with law and that a transcript of the record and proceedings upon which said decree was made, duly authenticated, be sent to the Supreme Court of the United States pursuant to the rules and provisions of law in such case made and provided.

Dated, New York, August 2, 1922. Nicolai Mansevich, Petitioner. Hale, Nelles & Shorr, Attorneys for Petitioner, 80 East 11th Street, New York City.

[File endorsement omitted.]

104 United States District Court, Southern District of New York.

[Title omitted.]

Order Allowing Appeal.

[Filed Aug. 4, 1922.]

Upon reading the petition for appeal herein and on consideration of the assignment of errors presented therewith it is

Ordered, that the appeal prayed for be and it hereby is allowed and that a certified transcript of the record and procedings herein be transmitted to the Supreme Court of the United States;

Dated, New York, August 3, 1922. Augustus N. Hand, United States District Judge.

[File endorsement omitted.]

105 At the Special Term of the United States District Court for the Southern District of New York Held at Chambers, in the Woolworth Building, 233 Broadway, Borough of Manhattan, City of New York, on the 10 Day of August, 1922.

Present: Hon. Augustus N. Hand, United States District Judge.

[Title omitted.]

Order Changing Amount of Bail.

[Filed Aug. 10, 1922.]

An application having been made on August 10, 1922, before Hon. Augustus N. Hand, United States District Judge for the Southern District of New York for resettling the order made and entered herein on August 1, 1922, after hearing John M. Ryan, Special Assistant United States Attorney, on behalf of the motion, and Isaac Shorr, Esq., of counsel for the relator, in opposition thereto, on motion of William Hayward, United States Attorney, attorney for the respondent, it is

Ordered that said order of August 1, 1922, be and the same hereby is amended by striking out Five hundred dollars, the amount of the bail bond ordered to be furnished by the relator pending the determination of his appeal herein to the United States Supreme Court, and substituting therefor the sum of two thousand dollars

106 as the amount of said bail bond to be furnished by said relator for the same purpose. Augustus N. Hand, United States District Judge.

The above order was consented to as to form. Hale, Nelles and Shorr, Attorneys for Relator.

[File endorsement omitted.]

107 **Citation and Service.**

[Filed Aug. 10, 1922.]

By the Honorable Augustus N. Hand, One of the United States District Judges for the Southern District of New York, in the Second Circuit, to Robert E. Tod, Commissioner of Immigration at the Port of New York, and William Hayward, Esq., United States Attorney for the Southern District of New York, and Harry M. Daugherty, Attorney General of the United States, Greeting:

You and each of you are hereby cited and admonished to be and appear before the United States Supreme Court in Washington, D. C., on the 2d day of September, 1922, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Southern District of New York, wherein Nicolai Mensevich, the Relator, is appellant, and Robert E. Tod, Commissioner of Immigration at the Port of New York, is appellee, to show cause, if any there be, why the order appealed from should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit aforesaid, this 3d day of August, in the year of our Lord one thousand nine hundred and twenty-two; and of the Independence of the United States the One Hundred and Forty-seventh. Augustus N. Hand, United States District Judge.

108 [File endorsement omitted.]

Service of a copy of the within is hereby admitted this 10th day of August, 1922. William Hayward, L. C., U. S. Attorney, Relator'-At-y. 10¢.

109 United States District Court, Southern District of New York.

[Title omitted.]

Order Enlarging Time.

[Filed Nov. 8, 1922.]

On the enclosed stipulation and the enclosed affidavit of Isaac Shorr, verified the 8th day of November, 1922, it is

Ordered that the time of the relator as appellant to docket the case and file the record thereof with the Clerk of the United States

Supreme Court be and it hereby is enlarged to and including the 10th day of November, 1922.

Dated, New York, November 8, 1922. Alex Gilchrist, Clerk.

[File endorsement omitted.]

110 United States District Court, Southern District of New York.

[Title omitted.]

Stipulation as to Transcript.

It is hereby Stipulated and Agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated —— —, ——. Hale, Nelles and Shorr, Attorneys for Appellant. William Hayward, Attorney for Appellee.

[File endorsement omitted.]

111 United States of America,
Southern District of New York, ss:

[Title omitted.]

Clerk's Certificate.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this sixth day of November in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the said United States the one hundred and forty-seventh. Alex. Gilchrist, Jr., Clerk. [Seal of District Court of the United States, Southern District of N. Y.]

Endorsed on cover: File No. 29,240. S. New York D. C. U. S. Term No. 690. The United States of America ex rel. Nicolai Mensevich, appellant, vs. Robert E. Tod, commissioner of immigration at the Port of New York. Filed November 9th, 1922. File No. 29,240.

Supreme Court of the United States

October Term, 1923

No. 195

UNITED STATES OF AMERICA, ex rel. NICOLAS MARANGOS,

Appellant,

against

ROBERT E. TOD, Commissioner of Immigration at the Port of New York,

Respondent.

ADDITIONAL BRIEF FOR THE APPELLANT

WALTER HELLER,
HAROLD HORNICK,
Attorneys and Counsel for Appellant,
[illegible]
New York City.

The Law Print, 41 Park Row, N. Y. C. Tel. Barclay 7893

Argued by
WALTER NELLES.

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 148.

UNITED STATES OF AMERICA ex rel. NICOLAI MENSEVICH,
Appellant,

against

ROBERT E. TOD, Commissioner of Immigration at the Port of New York,
Respondent.

ADDITIONAL BRIEF FOR THE APPELLANT.

(Upon the new state of facts brought to the attention of the Court in the brief for the appellee.)

Statement of Facts.

This case (a direct appeal from an order of the United States District Court for the Southern District of New York dismissing a writ of habeas

corpus) was before this Court on November 19, 1923, upon the Solicitor General's motion to dismiss or affirm. The Court has put the case upon the summary docket, reserving decision upon the motion until the hearing on the merits.

The single point is whether the detention of the relator for deportation to Poland, as the "country whence he came" when the Secretary of Labor is clearly bound, in both law and fact, to hold that Poland is *not* the country whence he came, is arbitrary, and deprives him of liberty without due process of law.

The relator came to the United States in 1911 from Russia. His home was in the Russian Province of Grodno. Upon the record as it stood when our original brief was filed, the United States had not recognized Grodno as part of Poland, and the Courts were, we believe, bound to hold that it continued to be part of Russia.

The Solicitor General's brief, filed since the motion to dismiss, asks the Court to take judicial notice of the recent action of our State Department, taken during the pendency of this appeal, recognizing that Grodno is now part of Poland. We are thus, at this advanced stage of the case, confronted in effect with a new record, to which our original brief is largely inapplicable. It seems desirable in this additional brief not only to adapt our argument to the new facts (upon the assumption that the Court will take judicial notice of them), but also briefly to restate the whole case, referring to our original brief for such matters of fact and argument as are there fully presented.

The relator had two hearings in the Department of Labor—the first in September, 1921 (Record,

pp. 56-67), following which the warrant for his deportation to Poland, as "the country whence he came," issued on September 30, 1921 (Record, p. 10); and a rehearing in February, 1922 (Record, pp. 11-56), after which the relator was taken into custody for deportation to Poland under the same warrant that had previously been issued. He was in custody at Ellis Island for immediate deportation to Poland when the writ of habeas corpus was sued out in June, 1922 (Record, pp. 1, 2). The constitutional point was duly taken in paragraph twelfth of the petition (Record, p. 4); the facts supporting it were better stated in the traverse to the return (Record, pp. 84, 85), in which the allegations of the petition were reincorporated by reference.

The facts, which are undisputed, are as follows:

The relator was born, and presumably resided until his emigration in 1911, in the village of Tychny, Province of Grodno, Russia (Record, pp. 11, 56). He speaks Russian and is of Russian race (Record, pp. 54, 14). He claims Russian citizenship (Record, p. 12). He came to the United States from Russia in 1911 under a Russian passport (Record, pp. 12, 14) and has remained continuously in the United States (op. cit.).

Poland was erected into an independent sovereignty by the Versailles treaties of June 28, 1919. Its eastern boundary was left for future determination (Versailles Treaty, Art. 87). Poland was authorized to proceed forthwith to effect its civil organization of the territory *west* of the Curzon Line.

The Province of Grodno lies *east* of the Curzon Line. Historically and ethnologically it belongs, not to Poland, but to Lithuania. Lithuania and Poland were united in sovereignty through the marriage of a Polish princess to a Lithuanian prince in 1386. The union lasted until the Russian annexation of Lithuania and part of Poland in 1795; Lithuania remained throughout, however, distinct from Poland. The Lithuanians kept not only their language and religion, but also their own law. They were in frequent revolt against Polish interference and predominance; their feeling was strong for union with Russia (*W. R. Morfill, Poland*, Story of the Nations Series, Putnam's, 1893, pp. 14-16, 47, and passim).

A large part of this Lithuanian region east of the Curzon Line, including the Province of Grodno, was conquered by Poland in war with Russia between 1919 and 1921. It was ceded to Poland by a treaty with the Soviet Government of Russia at Riga, March 18, 1921.

As our government, however, does not recognize the Soviet Government of Russia, and has often expressed itself as unfavorable to the recognition of dismemberments of the former Russian Empire unless clearly final, our State Department did not then recognize either the Polish conquest or the Treaty of Riga as affecting the sovereignty of the territory east of the Curzon Line (Secretary Hughes' letter of July 11, 1922, Record, p. 84; p. 6 of our original brief). Under the authorities cited in our original brief (pp. 7-11) questions of this character are political, not judicial, and the position taken by the State Department is conclusive upon the Department of Labor in deportation proceedings and upon the courts.

At the time of the habeas corpus proceeding in the District Court, June and July, 1922, the District Court was bound to hold that the Province of Grodno was presumed, until an inconsistent position should be taken by the political branch of our Government, still to appertain to the last sovereign whose government had been recognized by the United States—the Kerensky government of Russia. It was not, in law, a part of Poland, and detention of an emigrant from Grodno for deporatation to Poland as the "country whence he came" was clearly arbitrary (pp. 11-17 of our original brief). It was as if a German emigrant from the Ruhr had been ordered deported to "France, the country whence he came."

The brief for the appellee calls attention to subsequent action by our State Department which, if judicially noticed and deemed to relate back to the time of the deportation and habeas corpus proceedings below, makes the case analogous rather to that of a German emigrant from Alsace now ordered deported to France as the country whence he came.

On March 14, 1923, the Council of Ambassadors at Paris recognized the frontiers of Poland as laid down by a supplemental agreement between Poland and Russia at Riga on November 23, 1922, supplementing and confirming the Treaty of Riga of March 18, 1921. This recognizes the cession by Russia to Poland of the territory east of the Curzon Line, including the Province of Grodno. Our State Department recognized this new eastern frontier of Poland in March and April, 1923 (Appellee's Brief, Appendix, pp. 16-19). The Province of Grodno is now, therefore, part of Poland.

This Brief.

(1) We question whether this recognition of a new Polish frontier east of the Province of Grodno should be judicially noticed and deemed to relate back. (2) Assuming that it is noticed and deemed to relate back to the time of the proceedings below, Poland does not become the country whence the alien came. He came from Russia in 1911. His detention for deportation to Poland is none the less arbitrary, and deprives him of liberty without due process of law. (3) This Court has jurisdiction upon a direct appeal.

ARGUMENT.

I.

Quaere whether the recognition, subsequent to the proceedings below, that the province of Grodno is now part of Poland should be judicially noticed.

The recognition during the pendency of an appeal of a revolutionary government will be judicially noticed and given retroactive effect to validate property rights derived from it (*Oetjen* v. *Central Leather Co.*, 246 U. S. 297). But if the action of the Department of Labor was in fact arbitrary at the time, it is not easy to see how the subsequent course of history may be held to endow it with the quality of due process of law. The question here is dissimilar to that of property rights derived from a *de facto* government.

II.

The Secretary of Labor has no authority to deport the alien to another country than the country whence he came, even though such other country has acquired, since his emigration, the region of his former domicile.

The powers of Secretary of Labor with respect to destination of deportable aliens are limited and defined by Section 20 of the Immigration Act of February 5, 1917 (ch. 29; 39 Stat. 874). The material language is as follows:

> "Sec. 20. That the deportation of aliens provided for in this act shall, at the option of the Secretary of Labor, be to the country whence they came or to the foreign port at which such aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which they embarked for such territory; or, if such aliens entered foreign contiguous territory from the United States, or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their re-entry, or imposes any condition upon permitting re-entry, then to the country of which such aliens are subjects or citizens, or to the country in which they resided prior to entering the country from which they entered the United States."

Clearly, upon the record in this case, the only power which these provisions give to the Secretary of

Labor is a power to deport Mensevich to "the country whence he came."

We do not conceive this case as involving the correctness of a construction by the Secretary of Labor of the phrase "country whence he came." We conceive that it presents rather an election by the Secretary of Labor to deport the alien to a country other than the country whence he came—an act of naked arbitrary power.

A question of construction arises only when the statutory power is so expressed as to raise doubt, difficulty, ambiguity or uncertainty as to its precise scope. The phrase "country whence he came," in relation to the facts of this case, is entirely clear. In other cases, such as those cited in our original brief (pp. 13-16), there have been questions of construction—whether "country whence he came" refers exclusively to country of former domicile, or whether it may also include a country of still earlier domicile or a country of temporary later sojourn. The word "country," however, presents no difficulty of construction. It refers to a territory with definite bounds, forming a distinct unit over which sovereignty is exercised. One sovereign, as in the case of the British Empire, may rule many countries; but each is a distinct and definite entity, both geographically and politically. Here, for the first time, a question of the construction of the word "country" is attempted to be raised (not by us, but by the appellee) upon the artificial theory that the word, in a statute touching the field of international relations, is used in the loose and indefinite sense of *locality*: "a district of indefinite extent present to the view of thought" (Century Dictionary).

Of course the word has often this meaning in popular speech or literature: "He came from the country east of the Curzon Line—a country inhabited by Lithuanians and White Russians." But to feel the preposterousness of such a sense of the word in such a statute, it is only necessary to imagine that the Secretary of Labor had made an order for deportation "to the Grodno region, the country whence he came." The United States has no diplomatic relations or treaty with the Grodno region; it has no practical power to transport an alien across the country of which it is part and deposit him there. The assertion of such a power would be an enormity in international law and usage. Our legislation stops at the doorway of a friendly foreign sovereign. It does not enter his house.

Accordingly, deportation of a Savoyard is accomplished by depositing him at Havre; deportation of a Saxon to Germany by depositing him at Bremen; deportation of a Scotchman to Great Britain by depositing him at Liverpool. It is unthinkable that Congress should have intended to force upon the Secretary of Labor the ampler duty or power, impracticable of exercise, to restore an alien to the exact locality of his former domicile or sojourn. Deportation to Poland would not in fact restore Mensevich to the region whence he came. It would deposit him in some remote and alien part of Poland.

We disavow the contention imputed to us by the appellee that "country whence he came" necessarily means country of which he is a citizen or subject. The enormity of deporting a man to a country other than that whence he came is, how-

ever, emphasized by consideration of the difference between his relation to the country whence he came and his relation to the country to which it is proposed that he be deported.

Mensevich came from Russia, of which he was a citizen and in which he had a domicile. It is proposed to deport him to a country with which he has never had domiciliary or other relations and of which he is not a citizen.

The citizenship of non-resident natives of the conquered territory east of the Curzon Line is determined by the Treaty of Riga of March 18, 1921 (accessible only in typewritten translation at the Department of State).* Under the provisions of

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* The provisions of the Versailles treaties of June 28, 1919, apply only to persons from the territory west of the Curzon Line. The main treaty provides (Art. 91) that "Poles who are German nationals and are in a foreign country" may "obtain Polish nationality and lose their German nationality by complying with the requirements laid down by the Polish State." But by the separate treaty of the same date between Poland and the Allied Powers (Art. 4) Poland agreed to accept as Polish nationals all Russians and Germans born in said territory (i. e., west of the Curzon Line) of parents habitually resident there, even if resident abroad.

The Treaty of Riga of March 18, 1921, provides as follows as to natives of the conquered territory east of the Curzon Line:

> "Art. 6, par. 1. All persons over 18 years of age, who at the moment of ratification of this treaty are resident in the territory of Poland, and on August 1st, 1914, possessed the citizenship of the former Russian Empire and are registered or have a right to be registered in the registers of the permanent population of the former Kingdom of Poland, or were registered in the urban or in the rural communes, or belonged to the organizations of the social orders in the territories of the former Russian Empire which are now included in the territory of Poland, have a right to make a declaration for the option of Russian or Rumanian citizenship. From other citizens of the former Russian Empire of other categories, resident at the moment of ratification of this Treaty in the Polish territory, such a declaration is not required."

Paragraph 2 provides that persons of the categories defined in paragraph 1, and also persons of Polish extraction or sympathies, resident at the time of ratification in Russia or the

this treaty Mensevich could not obtain Polish citizenship save by filing a declaration within one year—and not then unless (1) he was a member of one of the specifically defined categories or of Polish extraction or sympathies, and (2) his declaration was accepted by the Polish authorities.

It is thus apparent that birth or former residence in the territory east of the Curzon Line which has now become Polish carries no automatic appertinence to Poland.

A similar situation exists as to Germans who emigrated from Alsace while it was under German rule. Under the Treaty of Versailles (Part III, Sec. V, Art. 53 and Annex) Alsations who lost French nationality in 1871 and those of their descendants whose ancestors include no German migrant are *ipso facto* reinstated in French nationality. Those whose ancestors include a German migrant, even if domiciled in Alsace, may become French, subject to French rejection, only by filing declaration within one year. German migrants and their descendants could become French only by naturalization, and not then except on proof of Alsation domicile prior to August 3, 1914, and three years unbroken residence subse-

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Ukraine, may become Polish citizens "if they make due declaration in conformity with the regulations of the option."

"3. Regulations concerning the option also concern persons who answer the requirements of Paragraphs 1 and 2 of this article, *if the said persons are residing outside of boundaries of Poland, or of Russia and Ukrainia,* and are not citizens of the State in which they are resident."

"5. Declarations for the choice of citizenship shall be applied for * * * in the term of one year from the moment of the ratification of this treaty."

Paragraph 6 provides that the making of declaration does not confer the chosen citizenship unless the declaration be accepted.

quent to November 11, 1918.* Germany is obligated (Art. 53) to receive all Alsations who have not been accepted as French. The treaty does not discriminate between Alsation residents and Alsations residing abroad. But it is reasonably clear that in the case of an Alsation of German stock abroad, France would repudiate the suggestion that France was the "country whence he came."

In the face of the actual plight of a German emigrant from Alsace who should now be "restored" to France or a Russian emigrant from Lithuania who should now be "restored" to Poland, we may leave unchallenged the assertion of the appellee (p. 11 of his brief) that Section 20 of the Immigration Act expresses a broad intent that the deportable alien "be restored as nearly as possible to the situation in which he stood immediately prior to his emigration."* Mensevich's situ-

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* Paragraph 3 of the Annex is as follows:
"subject to the provisions of Paragraph 2" (which relates primarily to Alsations of French descent but with a German migrant in their ancestry) "Germans born or domiciled in Alsace-Lorraine shall not acquire French nationality by reason of the restoration of Alsace-Lorraine to France, even though they may have the status of citizens of Alsace-Lorraine. They may acquire French nationality only by naturalization, on condition of having been domiciled in Alsace-Lorraine from a date previous to August 3, 1914, and of submitting proof of unbroken residence within the restored territory for a period of three years from November 11, 1918."

* This assertion is of course abundantly subject to challenge. Section 20 confers upon the Secretary of Labor no indefinite discretion to choose the destination which may seem to him most suitable under the circumstances. Its directions are definite and specific, with specific alternatives for specific contingencies. Exercise of the alternative power to deport to the foreign port at which the alien embarked to the United States would obviously, in most cases, put the alien in a very different situation from that in which he stood immediately prior to emigration. So would the alternative to deport to the country of which he is technically a citizen or subject in the situation when the country from which he emigrated attaches conditions to receiving him.

It is worth noting that the alternatives, except that to deport to port of embarkation, obviously call for deportation to a *country* which is a definite political entity, not to a definite town or province or an indefinite *region*.

ation in Warsaw or elsewhere in Polish Poland, or even in Grodno in the uncertain contingency of his actually reaching it—a contingency which the Secretary of Labor has no power to bring to pass and no statutory authority to attempt to bring to pass—would be entirely unassimilable to that in which he stood immediately prior to his emigration.

It is unnecessary to consider whether the Secretary of Labor's powers under Section 20 are holeproof—whether a situation might arise in which there would be no country in which the Secretary of Labor would be authorized to deposit a deportable alien.* We withdraw our suggestion (p. 17 of our original brief) that the case at bar presents a situation for which Section 20 does not provide.

For it seems to us, on consideration, that Russia, the country whence Mensevich came, still exists

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*This is theoretically possible. Neither logic nor history warrants an assumption that a *country*, any more than a particular sovereignty or form of government, has perpetuity of existence. Poland doubtless ceased to exist as a country at the time of its partition between Russia, Germany and Austria in 1795.

The possibility that a country whence an alien came may cease to exist would not warrant a forced construction of Section 20—a reading into it of a provision that in such event the Secretary of Labor may deport to some other country. If the possibility is of practical consequence, it is for Congress to provide against it. It was not of such practical consequence as to be within the contemplation of Congress when Section 20 of the Act of February 5, 1917, was enacted. At that time there had been no extinction or disappearance of a country for generations. The law and practice as to deportation, moreover, were to deport, if at all, almost contemporaneously with entry. Deportations subsequent to entry were, with inconsiderable exceptions (Section 19 of the Act of 1917—consolidating, without substantial alteration, much earlier provisions), expressly required to be effected within a limited period after entry. Extinction of country between entry and deportation was unlikely. It was not until 1918 (Act of October 16, 1918, Chap. 186, 40 Stat. 1012) that the class of aliens deportable "at any time after entry" was greatly enlarged, and deportation of aliens long rooted in American soil became common.

—that neither the attrition of its borders nor its internal vicissitudes have destroyed its continuity as a distinct entity. Since the Immigration Act deals with countries, not regions, the detachment from Russia of the region whence Mensevich came in no way affects the statutory authority of the Secretary of Labor to deport him to Russia, the country whence he came. Nor does the change or interregnum of government, however it may be viewed. Russia remains as an entity, subject as an entity to sovereignty and distinct from all other units of sovereignty—a country, distinct from all other countries—the same country, in substance, as the country whence Mensevich came.

The Secretary of Labor had a clear statutory authority to order that Mensevich be deported to Russia, the country whence he came. The order for his deportation to "Poland, the country whence he came" proceeds in flat disregard of this statutory authority; it cannot be palliated as a reasonable misconstruction of the statutory authority. That the contiguous country of Poland, and not Italy or Turkey, is the conqueror of the Lithuanian province of Grodno, is a fortuitous circumstance. The order for Mensevich's deportation to Poland is not less naked than would be, were Turkey the conqueror, an order for his deportation to "Turkey, the country whence he came."

III.

This Court has jurisdiction upon a direct appeal.

The point that an executive act is naked and arbitrary involves the application of the due process clause in much the same way as an executive finding unsupported by evidence. When there is some reasonable color for a claim that the act is within a stautory authority, as where there is some evidence, though slight and unsatisfactory, to support a finding, the application of the due process clause may not be involved.

The appellee argues that the detention of Mensevich for deportation to Poland had at least some reasonable color of statutory authority, and was therefore not an act of naked arbitrary power; that the application of the due process clause is secondary and remote; that if this case be held to involve the application of the constitution, practically all cases involving the scope and construction of a statutory authority would be brought within the jurisdiction of this Court upon a direct appeal. We have pointed out, however, that the claim that the case involves the construction of the Secretary of Labor's statutory authority arises only by way of defensive afterthought. It is a case of disregard of statutory authority.

The numerous cases cited in support of the appellee's contention (Appellee's Brief, pp. 6, 7) are far from analogous to this case. They include a case where the ground upon which jurisdiction was claimed was so far-fetched that it was not, and perhaps could not be, stated in the opinion

(*Ketcham* v. *Burr*, 245 U. S. 510); a case where the jurisdiction was invoked under entirely different statutory language—that of the District of Columbia Appeals Act—from that of Section 238 of the Judicial Code and the question was dissimilar (*Taylor* v. *Taft*, Secretary, 203 U. S. 461.; cases where jurisdiction was claimed on the ground that the construction of a treaty was involved, when the treaty provisions were in fact clear and the real question was as to the doubtful scope and meaning of a subsequent statute (*Sloan* v. *U. S.*, 193 U. S. 614; *Chin Fong* v. *Backus*, 241 U. S. 1); and cases where the substantial question was simply as to the correctness of a decision by a lower court under general principles of law (*In Re Lennon*, 150 U. S. 393; *Empire State-Idaho Mining Co.* v. *Hanley*, 205 U. S. 225; *Carey* v. *Houston and Texas Central R. R.*, 150 U. S. 170).

American Sugar Refining Co. v. *United States*, 211 U. S. 155, the case most strongly relied upon against the jurisdiction here, illustrates the distinction between an act done with reasonable color of statutory authority and an act of naked power. In that case the statute directed the Secretary of the Treasury to make polariscopic tests of sugar to determine the amount of customs duty. The question was whether the Secretary was bound to conduct the polariscopic tests in accordance with the custom of the trade, or whether he might conduct them with greater scientific accuracy. Whether or not the Secretary was right in deeming that the statute authorized him to conduct the tests with scientific accuracy, he was clearly not arbitrary. He was construing, though possibly misconstruing, his statutory authority, not

acting in disregard of it. This Court accordingly declined jurisdiction.

Clearly if, upon the record in the case at bar, the Secretary of Labor had detained Mensevich for deportation to "China, the country whence he came," his arbitrary disregard of the limits of his statutory authority would involve the application of the due process clause. On the other hand, the appellee is probably correct in saying that the cases turning upon whether "country whence he came" includes the country of former temporary sojourn as well as the country of former domicile involve rather a question of statutory construtions; either view, in the light of the statutory language, may with some reasonableness be maintained.

Not so, however, the contention that the order for deportation to Poland in this case was based upon a construction or misconstruction of "country whence he came"—that "country whence he came" in such a statute, used almost in the same breath with the alternative as to "country of which such aliens are subjects or citizens," means an indefinite region which is not and has never been a distinct unit of sovereignty—a construction inconsistent with the course adopted by the Secretary of Labor, who at least wrote in the warrant the name of a country, Poland, not that of the Grodno region. The argument is palpably manufactured, not to support a statutory construction relied upon by the Secretary, but to cloak the nakedness of a flat disregard of the limits of the statutory power.

The order appealed from should be reversed and the writ of habeas corpus sustained.

Dated, December , 1923.

Respectfully submitted,

WALTER NELLES,
ISAAC SHORR,
Attorneys and Counsel for Appellant,
80 East 11th Street,
New York City.

No. 1, Original.

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

The United States of America, by and through Nicholas Murray Butler,

Complainant,

vs.

Robert E. Ely, Commissioner of Education of the State of New York,

Defendant.

BRIEF FOR THE COMPLAINANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1923.

THE UNITED STATES OF AMERICA EX REL. Nicolai Mensevich, appellant, *v.* ROBERT E. TOD, COMMISSIONER OF IMMIGRATION at the Port of New York. } No. 148.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE APPELLEE.

STATEMENT.

The Motion to Dismiss or Affirm which was presented to the Court on October 19, 1923, was accompanied by a full statement of the material facts of this case, so far as they appear in the Transcript of Record. The decision of the Court to postpone consideration of the Motion until the hearing of the cause upon the merits renders necessary the statement of certain additional facts not appearing in the record, of which the Court will take judicial notice.

In 1795 the Kingdom of Poland was destroyed and its territory partitioned by the concerted action of Prussia, Russia, and Austria. From then until 1919

73596—23——1

there was no sovereign State of Poland, although there were portions of Germany, of Russia, and of Austria which were peopled almost exclusively by persons of Polish nationality.

During the course of the World War the Polish people asserted their right to a place in the Family of Nations as a sovereign State. To this the Government of Russia assented by proclamation on March 30, 1917, and on January 22, 1919, the United States officially recognized the Republic of Poland. Its representatives took part in the negotiation of the Treaty of Versailles, and on June 28, 1919, executed it along with the other signatory powers. (Senate Document No. 85, 66th Congress, 1st session.) On the same day a separate treaty with Poland was signed by representatives of the Principal Allies and Associated Powers, and later transmitted to the Senate of the United States, but failed of ratification. (Senate Document No. 82, 66th Congress, 1st session.)

The restoration of Poland as a sovereign State did not operate, however, to restore to her the precise territory which had been hers prior to her dissolution in 1795. By the Treaty of Versailles her boundaries were left indefinite and uncertain, to be fixed by subsequent action of the Principal Allied and Associated Powers, after plebiscite or treaty. (Treaty of Versailles, Art. 87.) On the north, west, and south she was bordered by States which were signatories to the Treaty of Versailles, and these boundaries were definitely fixed prior to the date of

the making of the order of deportation in this case on September 30, 1921. The eastern boundary, between Poland and the Soviet Republic of Russia, however, was not definitely fixed until the signing of the treaty of Riga on November 23, 1922.

From 1919 to 1922 the territory lying between the Curzon line, which ran irregularly north and south from Lithuania to Czechoslovakia, and the eastern boundary of Poland as finally fixed, was claimed by Poland and was actually under her administration and control. Within this territory known as the "Polish Occupation" lay the Province of Grodno, in which is situated the town of Tychny or Cichaniny, from which the Appellant emigrated to the United States in 1911. (R. 83–84.)

The Treaty of Riga, which terminated the struggle between Poland and the Soviet Republic on November 23, 1922, defined the eastern boundary of Poland, and as so defined the Province of Grodno lies in Poland. This boundary line was officially recognized by the Council of Ambassadors on March 14, 1923, and by the United States on March 23, 1923.

For the convenience of the Court, certain official communications from the Department of State, which supply such facts as we have stated above and which are not of common knowledge, have been printed as an appendix to this brief.

It thus appears that in 1911, when the Appellant emigrated to the United States, he came from the Province of Grodno, which was then a part of Russia.

In 1921, when the order for his deportation was made, this Province lay in the territory known as the "Polish Occupation," which was controlled and administered by Poland but not officially recognized as lying either within or without the boundaries of that State. To-day this Province is unquestionably part of Poland.

The statement which we made on page 8 of the Motion to Dismiss or Affirm, that—

> the only arguable proposition presented is whether, in view of the change in the political status of the Province of Grodno, a warrant directing the deportation of the relator to Poland is authorized by the Act of Congress,

is borne out by this statement in the Brief for Appellant accompanying his Brief in Opposition to the Motion (page 2):

> We do not, therefore, press the claim that Mensevich is not legally subject to deportation.
>
> We stand solely upon the point that the order for his deportation to Poland, as "the country whence he came," is an arbitrary and unconstitutional excess of power.

ARGUMENT.

I.

This appeal does not involve the construction or application of the Constitution of the United States, within the meaning of section 238 of the Judicial Code, and should be transferred to the Circuit Court of Appeals.

Section 20 of the Immigration Act (Act of February 5, 1917, ch. 29, 39 Stat. 890) provides, in part—

> That the deportation of aliens * * * shall * * * be to the country whence they came * * *.

The order for deportation made by the Secretary of Labor in this case directed that he be returned (R. 10)—

> "to Poland, the country whence he came."

It is manifest that in making this order the Secretary construed the word "country," as used in the statute, to mean the territory or land from which the appellant had come, and employed the term "Poland" to designate it, because that land was under the control and administration of Poland. Whether this construction was correct, or whether, as the appellant contends, the word "country" means the sovereignty to which he owed allegiance when he left Europe, is the only question involved in this case. We think it is clear that it does not "involve the construction or application of the Constitution of the United States" within the meaning of that clause as used in section 238 of the Judicial Code.

In *Empire State-Idaho Mining Co.* v. *Hanley*, 205 U. S. 225, 232, Mr. Justice Day said:

> It has been repeatedly held that it is only when the Constitution of the United States is directly and necessarily drawn in question that such an appeal can be taken, and the case must be one in which the construction or application of the Constitution of the United States is involved as controlling.

In *American Sugar Refining Co.* v. *United States*, 211 U. S. 155, an appeal was taken from a judgment of the District Court directly to this court. There, as in the instant case, an executive officer of the Government had made certain orders and regulations which were alleged to be in excess of his statutory powers, and the appellant urged that in so doing he had exercised legislative power in violation of the Constitution. This Court held that the case did not involve the construction or application of the Constitution, saying at page 161:

> Such direct appeals, under section 5 of the Act of 1891, can not be entertained unless the construction or application of the Constitution of the United States is involved.
>
> This is conceded, and counsel for appellant attempt to sustain the jurisdiction on the ground that the regulations assumed to add something to the dutiable standard prescribed by the tariff act, and that in doing so the Secretary exercised legislative power confided by the Constitution solely to Congress. But this does not constitute a real and substantial dis-

pute or controversy concerning the construction or application of the Constitution upon which the result depends.

The admitted duty of the Secretary of the Treasury was to construe as best he could the paragraph relating to collection of duty upon sugars, and to promulgate regulations for carrying it into effect. Rev. Stat., sec. 251. This and this alone he did. The only real substantial point involved is whether or not he misconstrued the statute, and that gives this court no jurisdiction upon direct appeal. *Sloan* v. *United States*, 193 U. S. 614, 620, and cases cited; *United States ex rel. Taylor* v. *Taft, Secretary*, 203 U. S. 461.

The case at bar is parallel. Under the facts presented here it became necessary for the Secretary of Labor to interpret the phrase "the *country* whence he came." He placed his interpretation upon it and made his order. In the language just quoted, "This and this alone he did. The only real substantial point involved is whether or not he misconstrued the statute, and that gives this court no jurisdiction upon direct appeal."

See also:

Carey v. *Houston & T. C. Ry. Co.*, 150 U. S. 170, 181.

In re Lennon, 150 U. S. 393.

Chin Fong v. *Backus*, 241 U. S. 1.

Ketchum v. *Burr*, 245 U. S. 510.

That the question of statutory construction is the only question here involved appears clearly from

paragraph 8 of the petition for writ of habeas corpus, wherein the question is first raised (R. 3); from the traverse to respondent's return (R. 84–85); from the second request made to the District Court to take judicial notice (R. 85); from the sixth, seventh, and eighth assignments of error (R. 88–89); and from the fact that the brief for the Appellant is devoted almost entirely to a demonstration of the proposition that Poland is not the "country whence he came."

What is the constitutional question which the Appellant believes to be involved? We find it thus stated in the Brief in Opposition to the Motion to Dismiss (pp. 1–2):

> Under a statute authorizing him to deport an alien to "the country whence he came," has the Secretary of Labor power to deport an alien to a country which indisputably is *not* the country whence he came?

It is urged, as we understand, that an alien held for deportation under an order which is beyond the statutory authority of the Secretary is deprived of his liberty without due process of law in the same manner as if the order were within his statutory authority but were without any evidence whatever to sustain it; and that therefore the case involves the application of the Fifth Amendment. (See Brief for Appellant, page 13.)

The difficulty is that the application of the Constitution is too remote to be a controlling issue. If the

order of deportation be beyond the statutory authority of the Secretary of Labor, why that is an end of the matter. (*Gegiow* v. *Uhl*, 239 U. S. 3; *United States* v. *Redfern*, 186 Fed. 603.) It is void because it is without any lawful warrant. No application of the Fifth Amendment is necessary, nor can the constitutional restriction make it any more void.

If this be a case in which the construction or application of the Constitution is involved within the meaning of section 238 of the Judicial Code, then, as Mr. Chief Justice Fuller said in *World's Columbian Exposition* v. *United States*, 56 Fed. 654, 667, "every case arising under the laws of the United States might be said to involve the construction or application of the Constitution, or the validity of such laws."

The appellant, in his Brief in Opposition to the Motion, has called attention (pages 4–5) to the Act of September 14, 1922, chap. 305, 42 Stat. 837, which added a new section to the Judicial Code and provided for the transfer of cases to the Circuit Court of Appeals where appeals had been improperly taken to this court. We concur with the suggestion of the Appellant that in this case the question involved is one for the Circuit Court of Appeals, and that the appeal here should not be dismissed but should be transferred to the Circuit Court of Appeals for the Second Circuit.

73596—23—2

II.

Poland is the "country whence he came."

The word "country" has more than one meaning. It may be used in a political sense to refer to a sovereign State or jurisdiction, or it may be used in a geographical sense to refer to certain land or territory.

Thus it has been held that within the meaning of certain revenue laws the word "country" embraces all the possessions of a State, however widely separated, which are subject to the same supreme executive and legislative control.

Faber v. *United States*, 221 U. S. 649.
Faber v. *United States*, 157 Fed. 140.
Pearcy v. *Stranahan*, 205 U. S. 257.
Stairs v. *Peaslee*, 59 U. S. 521.
United States v. *The Recorder*, 27 Fed. Cas. 718.

On the other hand, the word "country," as used in 12 Stat. 557, is used in a local or geographical sense (*Campbell* v. *Barney*, 4 Fed. Cas. 1157, 1158). In still other cases the word has been construed to refer to States of the Union. (*In re Farez*, 8 Fed. Cas. 1007, *Mansell's Adm'r.* v. *Israel*, 6 Ky. (3 Bibb) 510, 514.)

It is a question of construction in each case. In the case at bar the question is whether Congress intended that an alien should be deported to the land or territory from which he had come, or whether he should be deported to that sovereign State to which he owed allegiance at the time he came.

A reading of section 20 of the Act of February 5, 1917, chap. 29, 39 Stat. 890, indicates clearly that it was the intention of Congress that an alien, when deported, should be returned to the place from which he came, so that he might be restored as nearly as possible to the situation in which he stood immediately prior to his emigration. The only circumstance under which this is not to be done is one specifically provided for by that portion of the section which provides that—

> If such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their reentry, or imposes any condition upon permitting reentry, then to the country of which such aliens are subjects or citizens, or to the country in which they resided prior to entering the country from which they entered the United States.

In addition to the fact that, as we believe, this intention on the part of Congress is evident from the language of the Act, we find that the contrary construction, for which the Appellant contends, would produce absurd results in the administration of the Act. If the word "country" refers to the sovereignty to which the alien owed allegiance at the time he came to the United States, then in the case of one who was a Russian citizen in 1911 and owed allegiance to the Imperial Russian Government, he could not be deported at all. The sovereignty

to which he owed allegiance no longer exists. A new one has been created. It is not material to inquire here whether the allegiance of this alien, who resided in the United States at the time of the change of government in Russia, was transferred from the Czar to the Soviet Republic, for in any event it would no longer be possible to deport him to any "country" to which he owed allegiance at the time he came here.

Again, if this construction be correct, an alien who came here from England might be deported to Australia, and landed at a port on the side of the globe opposite to his original home. Both are a part of the British Empire to which he owes allegiance. A construction of the statute which would permit such a result should obviously be avoided, if another and more reasonable construction may be found.

The Appellant says, however, that these results merely indicate that the Act of Congress was framed without a consideration of the possible changes which might take place in the boundaries of various States. (See Brief, p. 17.) This may be true, but it furnishes no reason why the Act should not be construed in accordance with its obvious intent and purpose, so that aliens who came here from a certain land or territory should, when deported, be returned to that land or territory regardless of any changes which may have taken place in the sovereignty which is in control of that land.

In the Brief for Appellant the following cases are cited to sustain the second point, that "the order of deportation to Poland was unauthorized and arbitrary, and inconsistent with due process of law" (see Brief for Appellant, pp. 13–16):

Lewis v. *Frick*, 233 U. S. 291.

United States v. *Redfern*, 186 Fed. 603 (Dist. Ct.).

United States v. *Ruiz*, 203 Fed. 441 (C. C. A., 5th Cir.).

Ex parte Gytl, 210 Fed. 918 (Dist. Ct.).

Yee Suey v. *Berkshire*, 232 Fed. 143 (C. C. A., 5th Cir.).

United States v. *Sisson*, 206 Fed. 450 (C. C. A., 2d Cir.).

Ung Bak Foon v. *Prentis*, 227 Fed. 406 (C. C. A., 7th Cir.).

Bun Chew v. *Connell*, 233 Fed. 220 (C. C. A., 9th Cir.).

Singh v. *United States*, 243 Fed. 557 (C. C. A., 9th Cir.).

Lee Ching v. *Collector of Customs*, 33 Philippine Reports 329.

To these might have been added:

Lavin v. *Le Fevre*, 125 Fed. 693 (C. C. A., 9th Cir.).

Ex parte Wong You, 176 Fed. 933 (Dist. Ct.).

Lee Sim v. *United States*, 218 Fed. 432 (C. C. A., 2d Cir.).

Ex parte Halkides, 291 Fed. 585 (Dist. Ct.)

An examination of these cases is interesting in their bearing both upon the jurisdiction of this Court and upon the construction of the statute. On the jurisdictional question it is significant that every one of the nine cases which were appealed went to the Circuit Court of Appeals. The only one which came before this Court was brought here on writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit. Neither counsel nor the courts in these cases seem to have considered the constitutional question which is alleged to be controlling in the case at bar. In all of the fourteen cases the question is properly treated as a question of statutory construction.

In their bearing upon the construction of the statute, we find that these cases did not call for a construction of the word "country," but rather of the phrase "whence he came." They were cases of aliens who, after leaving the land of their nativity, had established or claimed to have established a domicile in in some other country, from which latter country they had come into the United States. The question in each case was whether the former or the latter were the country *whence they came*. We think the distinction between these and the case at bar is obvious.

The remaining case of *Ex parte Matthews*, 277 Fed. 857, cited by the Appellant, turned upon the absence of proof in the record of certain material facts, and did not call for a construction of the statute.

CONCLUSION.

We respectfully submit that the sole question involved in this case is one of statutory construction, that it does not "involve the construction or application of the Constitution," and that it should be transferred to the Circuit Court of Appeals for the Second Circuit, in accordance with section 238 (a) of the Judicial Code. And upon the question of construction we submit that the word "country" must be construed to mean the land or territory from which an alien came, regardless of any change which may have taken place since his emigration in the sovereignty which controls or administers such territory.

Respectfully submitted.

JAMES M. BECK,
Solicitor General.
GEORGE ROSS HULL,
Special Assistant to the Attorney General.

NOVEMBER, 1923.

APPENDIX.

Copy: GAE: SS.
M. E. A.

DEPARTMENT OF STATE,
Washington, March 26, 1923.

The honorables the SECRETARY OF STATE, the SECRETARY OF COMMERCE, and the SECRETARY OF LABOR.

GENTLEMEN: This Government is advised that the eastern frontiers of Poland, embracing the areas described as Eastern Galicia and as the Pinsk region in the list of quotas for each country and district for the fiscal year 1922–1923, approved by yourselves jointly, June 12, 1922, pursuant to section 2 (c) of the Act to limit the immigration of aliens into the United States, approved May 19, 1921, and as amended by a Joint Resolution approved May 11, 1922, have been recognized by the Council of Ambassadors as belonging to Poland and as subject to its sovereignty. This Government takes cognizance of that decision, which is in harmony with the assertions of territorial sovereignty by Poland.

I, therefore, have the honor to inform you that this Government acknowledges and recognizes the areas described as Eastern Galicia and the Pinsk region in the list of quotas above mentioned, to be a portion of the territory embraced under the sovereignty of Poland.

I am, gentlemen,

Your obedient servant,

(S) CHARLES E. HUGHES.

AGREEMENT OF THE SECRETARIES OF STATE, COMMERCE, AND LABOR.

Copy: GAE: SS.
M. E. A.

On June 12, 1922, under Public Resolution No. 55, 67th Congress, a Joint Resolution approved May 11, 1922, extending the operation of the Immigration Act of May 19, 1921, quotas were fixed for the Pinsk region, which in 1910 was a part of Russia, and for Eastern Galicia, which in 1910 was a part of Austria.

The three Secretaries having been informed by the Secretary of State on March 26 that the United States now acknowledges and recognizes the areas described as Eastern Galicia and as the Pinsk region in the list of quotas above mentioned to be a portion of the territory embraced under the sovereignty of Poland, it is agreed that for the balance of the present fiscal year the quotas of these two regions shall be merged with that of Poland.

CHARLES E. HUGHES,
Secretary of State.
HERBERT HOOVER,
Secretary of Commerce.
JAMES J. DAVIS,
Secretary of Labor.

Approved March 26, 1923.

In reply refer to
File No. 760C.6115/8. Diplomatic Serial No. 189.

DEPARTMENT OF STATE,
Washington, April 10, 1923.

To the Diplomatic Officers of the United States:

GENTLEMEN: At its 209th meeting, March 14, 1923, the Conference of Ambassadors at Paris recognized the frontiers of Poland (1) with Russia as laid down by the Treaty of Riga of November 23, 1922; (2) with Lithuania as existing at present. The Embassy at Paris reported that the effect of this decision was merely to validate existing conditions.

The Embassy added confidentially that, as a result of a request by both patries, no reference was made to the frontier between Poland and Latvia. The Polish and Lettish Governments desire to make a separate agreement, as it is feared that any pronouncement by the Conference might stir up nationalistic feeling in both countries.

On March 26 the Secretary of State addressed a letter to the Secretaries of State, Commerce, and Labor, who are charged with the administration of the Restrictive Immigration Act, advising them that this Government took cognizance of the decision of the Conference of Ambassadors, above cited, which was in harmony with the assertions of territorial sovereignty by Poland and effectively attributed to Poland the regions of Pinsk and Eastern Galicia. (See Instruction No. 128 of June 28, 1922.) On the basis of this letter the three Secretaries agreed that for the remainder of the present fiscal year the immigration quotas heretofore maintained for these two regions should be merged with that of Poland.

Subsequently the Polish Minister at Washington inquired if this Government would be disposed to

communicate to the Polish Government some expression in the nature of "good wishes" upon the settlement in the manner indicated of the eastern boundaries of Poland. The Department communicated this fact to the American Legation at Warsaw and informed the Legation that it was the general policy of the Department to avoid participating in purely European territorial adjustments and to accept such adjustments, when effected by the governments concerned, as facts with respect to which this Government was not called upon to express either approval or disapproval. The Legation was authorized in this case to communicate to the Polish Government the fact that the Government of the United States "has taken cognizance of the decision of the Council of Ambassadors at Paris March 14, 1923, with regard to the Polish frontiers, which was in harmony with the assertions of territorial sovereignty by Poland."

The foregoing is communicated for your information.

I am, Gentlemen,

Your obedient servant,

For the Secretary of State:

WILLIAM PHILLIPS.

Index under:
Poland:

Diplomatic officers informed re recognition of the frontiers of, by Conference of Ambassadors at Paris at 209th meeting, March 14, 1923, of which Government of United States has taken cognizance.

Embassy or Legation File No. 715.

○

To be argued by

WALTER NELLES.

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 148.

THE UNITED STATES OF AMERICA
ex rel. NICOLAI MENSEVICH,
Appellant,

against

ROBERT E. TOD, Commissioner of Immigration at the Port of New York,
Respondent.

BRIEF FOR APPELLANT.

Statement of Facts.

This is a direct appeal to this Court from an order of the United States District Court for the Southern District of New York dismissing a writ of habeas corpus (Record, p. 87). It presents the point that the direction of the Secretary of Labor to deport the relator to Poland as the "country whence he came," when it is indisputable that Po-

land is *not* the country whence he came, is unauthorized and arbitrary, and deprives the relator of liberty without due process of law.

The constitutional question was duly raised by the petition for habeas corpus (Record, p. 4) and the traverse to the return (Record, pp. 84-85).

A departmental warrant for Mensevich's deportation (Record, p. 10) was issued on September 30, 1921. This warrant was based on hearings held September 7th and 12th, 1921 (Record, pp. 56-67). After issuance of the warrant the Secretary of Labor directed a rehearing at which the former evidence was repeated and additional evidence introduced (Record, pp. 11-56). The record discloses flagrant violations of constitutional rights. The additional evidence upon rehearing, however, which is not here open to attack for falsity, makes a case for deportation independent of the case based upon violations of constitutional rights. We do not, therefore, press the claim that Mensevich is not legally subject to deportation.

We stand solely upon the point that the order for his deportation to Poland, as "the country whence he came," is an arbitrary and unconstitutional excess of power.

The warrant of deportation (Record, p. 10) commands the Commissioner of Immigration

> "to return the said alien to Poland, the country whence he came."

Mensevich, a man of Russian race and parentage who has repeatedly affirmed his Russian citizenship, was born on May 2, 1896, in the village of Tychny or Cichaniny, province of Grodno, Russia

(Record, pp. 11, 12, 14, 56, 57). He came to the United States as a Russian, with a Russian passport, in 1911 (Record, pp. 14, 57), and has remained in the United States without interruption.

Of what country the province of Grodno is now part, and of what country its emigrant natives are citizens—these are manifestly questions of international law, not of individual opinion. Mensevich's conclusion that Grodno is now part of Poland (Record, pp. 12, 56) rests obviously upon misconstruction of the legal effect of the recent Polish military occupation of the province of Grodno. At the first hearing he appears to have indulged the further inference that the Polish occupation of Grodno had divested his Russian citizenship (Record, p. 57). On rehearing he asserted his claim of Russian citizenship (Record, p. 12). The inspector, however, reported to the Department of Labor the finding that Mensevich is a "citizen of Poland, of Russian race" (Record, p. 54); and the Department of Labor, after review of the record on rehearing, directed Mensevich's deportation under the outstanding warrant which had issued following the original hearing (Record, p. 8), and which directs his deportation to Poland as the "country whence he came" (Record, p. 10).

The substantive facts are undisputed, viz., that Mensevich came from Grodno and entered as a Russian in 1911, and has since remained continuously in the United States, and that Grodno, though under Polish occupation, has not been recognized as part of Poland. The latter is a fact of such character that it will be judicially noticed by any court at any stage of any pro-

ceeding. As the facts are undisputed, the finding that Poland is the country whence Mensevich came can rest only upon Mensevich's erroneous conclusions as to the legal effect of the Polish occupation of Grodno. These erroneous conclusions are of no significance whatever in determining of what country Grodno is, in law, a part, and of what country natives of Grodno who emigrated as Russians are now citizens. They should have been disregarded.

Grodno was indubitably recognized by our government as part of Russia when Mensevich left it for the United States. It had been so recognized for over a century. Its status as part of Russia continues until the political departments of our government take some inconsistent action. The political departments have taken no inconsistent action. On the contrary, they have made it clear that this government carefully abstains from recognizing Grodno as part of Poland.

The rulings of the executive branch of our government establish conclusively, and to the exclusion of all attempts to maintain in law or fact a contrary hypothesis, that Grodno cannot in an American court be deemed part of Poland. Two branches of the executive—the Department of Labor and the Department of State—have ruled on the point.

The Department of Labor has ruled that natives of the Polish Occupation Territory, which includes Grodno, may not be included within the Polish immigration quota. The Commissioner General of Immigration answered as follows an inquiry from Mensevich's attorneys (Record, p. 83):

"U. S. Department of Labor,
Bureau of Immigration,
Washington.

Address reply to Commissioner General of Immigration and refer to No.....

June 28, 1922.

Messrs. Hale, Nelles and Shorr,
80 East 11th St.,
New York, N. Y.

Sirs:

In reply to your letter the Bureau has to advise that natives of the region designated as the 'Polish Occupation Territory' are not included within the Polish quota, but commencing with July 1 will be included within a quota allotted to what will be termed the 'Pinsk Region.'

Respectfully,

I. F. WIXON,
Assistant Commissioner General.

MAC/CS."

The Secretary of State answered as follows an inquiry from the United States Attorney with relation to this case (Record, p. 84; see also his letter to Messrs. McElroy & Reid, p. 83):

"Department of State,
Washington.

July 11, 1922.

Mr. William Hayward,
United States Attorney,
New York City.

Sir:

Reference is made to your letter of June 30, 1922, addressed to the Attorney General, relating to the deportation of Nicholai Mensevich, and requesting certain information concerning the political status of the town of Tychny or Cichaniny. A copy of your letter has been referred to this Department, for its consideration.

In reply you are informed that the towns of Tychny and Cichaniny appear to be the same. The Government of the United States has recognized Poland as a sovereign state. This action, however, did not involve the recognition of her territorial boundaries. Without undertaking to pass upon the status of the territory east of the Curzon Line, in which this town lies, you are informed that this Department understands that this territory is now under Polish administration. I am, Sir,

Your obedient servant,

CHARLES E. HUGHES."

SPECIFICATION OF ERROR.

(Assignment of Errors, Record, pp. 88, 89.)

The District Court erred in not holding that the order for Mensevich's deportation to Poland was arbitrary and unauthorized by law, and deprived

him of life, liberty, and property without due process of law.

ARGUMENT.

I.

The rulings of the Department of State and Labor conclusively establish that the province of Grodno is not part of Poland.

That Grodno is not part of Poland, and consequently that Poland is not the country whence Mensevich came, is conclusively fixed and determined by the rulings of the political branch of the government. Questions of extent of territorial sovereignty are not open to trial or adjudication upon evidence. What any individual says or thinks about them is immaterial. The position taken by the executive branch, in the absence of inconsistent action by the legislative branch, is conclusive, and the Courts will take judicial notice and conform to it regardless of what may have been alleged or proved.

Jones v. *United States,* 137 U. S. 202.
Williams v. *Suffolk Insurance Co.,* 13 Pet. 415.
Oetjen v. *Central Leather Co.,* 246 U. S. 297, 302.
In re Cooper, 143 U. S. 472, 503.
Gelston v. *Hoyt,* 3 Wheat. 246, 324.

In *Jones* v. *United States, supra*, the Court said at page 212:

> "Who is the sovereign, *de jure* or *de facto*, of a territory is not a judicial, but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects of that government."

The Court quoted as follows from *Williams* v. *Suffolk Insurance Co., supra* (13 Pet. at 420):

> "Can there be any doubt that when the executive branch of the government, which is charged with our foreign relations, shall in its correspondence with a foreign nation assume a fact in regard to the sovereignty of any island or country, it is conclusive on the judicial department? And in this view it is not material to inquire, nor is it the province of the court to determine, whether the executive be right or wrong. It is enough to know, that in the exercise of his constitutional functions he has decided the question.

The Court said further at page 214:

> "All courts of justice are bound to take judicial notice of the territorial extent of the jurisdiction exercised by the government whose laws they administer, or of its recognition or denial of the sovereignty of a foreign power, as appearing from the public acts of the legislature and executive, although those acts are not formally put in evidence, nor in accord with the pleadings."

In *Pearcy* v. *Stranahan*, 205 U. S. 257, 273-274, in a situation where the political departments of the government had expressly reserved for future

action the determination of the *de jure* status of the Isle of Pines, Mr. Chief Justice White and Mr. Justice Holmes, though concurring in the decision that the island remains a foreign country while not occupied by the United States, deemed it material to protest against any intimations in the majority opinion with respect to its *de jure* status

Recognition of territorial boundaries of Russia, including the province of Grodno, is implied in our diplomatic relations with Russia for a period of over a century. The status of Grodno as part of Russia will continue until some inconsistent action is taken by the political branch of our government. As Mr. Justice Story said in *Gelston* v. *Hoyt*, 3 Wheat. 211, 224:

> "No doctrine is better established, than that it belongs exclusively to governments to recognize new states in the revolutions which may occur in the world; and until such recognition, either by our own government, or the government to which the new state belonged, courts of justice are bound to consider the ancient state of things as remaining unaltered."

The position taken by the political departments upon questions of territorial sovereignty will be judicially noticed and given effect by any court at any stage of a pending proceeding, irrespective of the record. In *Kennett* v. *Chambers*, 14 How. 38, 47, 48, a bill for specific performance of a contract made by a general of the Texan army with a view to financing operations against Mexico was dismissed on demurrer. The decision was based on the fact that the independence of Texas, though asserted by that State, had not then been recog-

nized by the United States. The Court established this by reference to the President's messages, a letter from him to the Governor of Tennessee, and a note from the Secretary of State to the Mexican minister. None of these were part of the record before the Court. In a recent English case, Mr. Justice Roche, taking judicial notice of the fact that the Soviet Government of Russia had not been recognized by his government, denied validity to a title derived from the Soviet Government (*Aksionairnoy Obsschestvo, etc.* v. *Sagor,* L. R. 1921, 1 K. B. 456). The Court of Appeal, holding this decision correct as of the time it was made, took judicial notice of the subsequent recognition of the Soviet Government as a *de facto* sovereignty and reversed the decision (L. R. 1921, 3 K. B. 532).

From these authorities it is clear that if positions were reversed and the relator were affirmatively asserting, instead of denying, that, in view of the Polish occupation of Grodno, Poland is the country whence he came, it would be the duty of this Court to disregard his assertion and give effect to the position taken by the political branch of the government with respect to the status of the Province of Grodno. He could not be suffered to put the United States to any extent whatever in the position of recognizing a territorial sovereignty as to which its actual attitude is one of painstakingly reserved decision. Neither can the inconsiderate action of officials of the Department of Labor in this particular case, obviously taken without regard to its implications or intention to reverse the carefully considered position of the political department of our government.

The State Department's "understanding" that Grodno is now under Polish administration is

merely a statement of its knowledge of a fact. It is far from indicating a recognition of Polish sovereignty over that territory, either *de jure* or *de facto*. It might similarly say that it understands that Moscow is under the administration of the Soviet Government without implying the slightest degree of recognition of that government. As to the Province of Grodno, Poland must stand in our courts as the Republic of Costa Rica would have stood in *Jones* v. *United States, supra,* if at the moment of litigation the guano island which the political department of our government recognized as appertaining to the United States had been in fact under Costa Rican occupation and administration.

II.

The order of deportation to Poland was unauthorized and arbitrary, and inconsistent with due process of law.

The material language of Section 20 of the Immigration Act (Act of February 5, 1917, ch. 29; 39 Stat. 874), is as follows:

> "Sec. 20. That the deportation of aliens provided for in this act shall, at the option of the Secretary of Labor, be to the country whence they came or to the foreign port at which said alien embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which they embarked for such territory; or if such aliens entered foreign contiguous territory from the United States or if such aliens are held by the country from

> which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their re-entry, or imposes any condition upon permitting re-entry, then to the country of which such aliens are subjects or citizens, or to the country in which they resided prior to entering the country from which they entered the United States."

In this case there is no record or finding as to Mensevich's port of embarkation for the United States. There is no suggestion that he entered from foreign contiguous territory. The only option open to the Secretary of Labor, therefore, is to deport him to the country whence he came. He came from Tychny in the Province of Grodno. The rulings of the executive departments of State and Labor conclusively establish that Grodno is not part of Poland, and that Poland, therefore, is not the country whence he came. The Immigration Law makes no provision for the return of an alien to a particular town or province, and it is not the practice of the Department of Labor to deport aliens to the particular region whence they came. It has no appropriation with which to effect the relator's deportation to the Village of Tychny. And if it had a sufficient appropriation, it would have neither legal right so to expend it, nor physical power to see that he was transported across Poland and past the Curzon line. Deportation is complete when the alien is deposited at any convenient port of entry in his country of origin. The present state of national feeling in Poland is well known. To deposit at Warsaw an alien stranger under the stigma of deportation from the United States might cost him his life.

The situation is precisely the same as if the Secretary of Labor issued a warrant directing that a German native of the Ruhr territory be returned to "France, the country whence he came," and executed the warrant by depositing him at Bordeaux or Marseilles.

The order of the Department of Labor is worse than a mistake of law, such as was involved in *Gegiow* v. *Uhl*, 239 U. S. 3. It is a flat violation of law. No possible construction of the Immigration Act confers upon the Department of Labor authority or discretion to deport an alien to a hostile country to which he is wholly a stranger—a country in which, for all that appears, he has never set foot. The finding that Poland is the country whence he came is as arbitrary and as inconsistent with the fundamental principles of justice embraced within the conception of due process of law as a finding unsupported by evidence or without fair hearing.

> *American School of Magnetic Healing* v. *McAnulty*, 187 U. S. 94.
> *Chin Yow* v. *United States*, 208 U. S. 8.

Though the particular situation is of first impression, the principles applicable to it are not.

In *Lewis* v. *Frick*, 233 U. S. 291, this Court said, at pages 303-304:

> "His destination ought not to be controlled by the factitious circumstance that he went into Canada to procure the prostitute. And, upon the whole, it seems to us that the Act reasonably admits of his being returned to the land of his nativity, that being in fact 'the country whence he came'

> when he first entered the United States. See *Lavin* v. *Le Fevre*, 125 Fed. Rep. 693, 696; *Ex parte Wong You*, 176 Fed. Rep. 933, 940; *United States* v. *Ruiz*, 203 Fed. Rep. 441, 444. We need go no further, and may therefore leave undecided the question whether the Act leaves any room for discretion on the part of the Secretary of Commerce and Labor."

What the Court here left undecided was whether the statute empowered the Secretary of Labor in his discretion to construe "country whence he came" as meaning the country of latest entry (Canada in the particular case) as well as the country from which the alien departed for his original entry. By no possibility of construction can this case be deemed to intimate a doubt of the power and duty of the courts to prevent by habeas corpus the exercise by the Secretary of Labor of an arbitrary discretion to nominate as the country whence the alien came the country where there is no reason to believe that the alien ever in fact set foot.

In the lower federal courts the cases in which the conformity of the Secretary of Labor's directions as to destination with his statutory power has been examined are numerous. In most of them the question was whether the Secretary was obliged to deport Chinese to Canada or Mexico rather than to China, and the decisions, like that in *Lewis* v. *Frick*, *supra*, sustained his designation of the country of ultimate origin. But in all cases where the Department of Labor has attempted to exercise a discretion in the selection of destination clearly exceeding the power conferred upon him by the statute, habeas corpus has been sustained.

In *United States ex rel. Ruiz* v. *Redfern*, 186 Fed. 603, the relator (though of Spanish birth) was

naturalized and had his domicile in the Republic of Panama and came thence to the United States. The warrant for his deportation directed that he be returned to Spain. Habeas corpus was sustained. Though Spain was the country of his origin, it was clearly arbitrary to say that Spain was the "country whence he came." District Judge Foster said:

> "I do not find that the Secretary of Commerce and Labor has any discretion whatever in the matter, and any warrant that attempts to exercise such discretion is necessarily illegal and void."

And in affirming this decision the Circuit Court of Appeals for the Fifth Circuit (whose decision was cited by this Court in *Lewis* v. *Frick, supra*), said (203 Fed., at 444):

> "Detention under a warrant directing the relator's deportation to a country to which the government had no right to cause him to be deported is an illegal detention and restraint of his liberty against which a writ of habeas corpus is an available remedy."

In *Ex parte Gytl,* 210 Fed. 918, the relators were a group of Austrains domiciled in Canada, who had, in ignorance that they were crossing a frontier, taken employment with a farmer in North Dakota. The Department of Labor directed their deportation to Austria. The Court sustained a writ of habeas corpus upon the ground that Canada was clearly the only country from which it could fairly be held that they had come, saying:

> "The evidence presenting no controverted issue of fact, the determination of the country to which they should be deported is

> wholly a matter of law and the decision of that question by administrative officers is not binding upon the court."

The same principles were applied by the Circuit Court of Appeals for the Fifth Circuit in *Yee Suey* v. *Berkshire,* 232 Fed. 143; and by the Circuit Court of Appeals for the Second Circuit in *United States* v. *Sisson,* 206 Fed. 450. The latter case involved an attempt to deport to China persons of Chinese race who had entered the United States from Canada, where they were domiciled. There was no evidence that they had ever been in China. The Court said:

> "It is said that the Canadian authorities will not accept these aliens, but with that we have nothing to do. * * * The country whence these aliens came is unquestionably Canada, and there is no provision of that act (the Immigration Act) which permits their deportation to China."

See, also:

Ung Bak Foon v. *Prentis,* 227 Fed. 406 (C. C. A., 7th Cir.).

Bun Chew v. *Connell,* 233 Fed. 320 (C. C. A., 9th Cir.).

Singh v. *United States,* 243 U. S. 557 (C. C. A., 9th Cir.).

Ex parte Matthews, 277 Fed. 857 (Western District of Washington).

Lee Ching v. *Collector of Customs,* 33 Philippines 329, 332.

There is no room to suppose that in the selection of destinations for deportation the Department of Labor has an arbitrary discretion which the involved, but painstakingly precise, language of the statute (pp. 11-12, *supra*) in nowise pretends to confer. And there can be no doubt upon either principle or authority that the attempt by the Department of Labor to assert and exercise such an arbitrary discretion violates the principles of due process of law and presents a situation where the Court, upon a direct appeal from the District Court, may insist upon the correct construction and application of the due process clause of the Fifth Amendment.

It is unnecessary upon this record to consider or pass upon the situation which might arise if the Province of Grodno should be recognized by this government as part of Poland—or to take another illustration, if the case were of a German-born immigrant from Alsace now ordered deported to France. That case, when it arises, will be by no means simple. The Courts may well hesitate to decide, or to hold that the Secretary of Labor has discretion to decide, that France is the country whence such an Alsatian came.

The case at bar is much stronger. The obvious fact of the situation is that Section 20 of the Immigration Act was framed without reference to the possibility of readjustment of national boundaries. The course of history has created situations which its provisions do not cover.

CONCLUSION.

The rulings of the Executive Departments of State and Labor conclusively determine that Poland is not the country whence Mensevich came. The attempt to deport him thither is arbitrary and unauthorized and violative of the principles of due process of law.

The order appealed from should be reversed and the writ of habeas corpus sustained.

Dated, November 19, 1923.

Respectfully submitted,

ISAAC SHORR,
WALTER NELLES,
Attorneys and Counsel for Appellant,
80 East 11th Street,
New York City.

State which, at the time of deportation, includes the place from which an alien came. P. 136.

3. The validity of a detention questioned by a petition for *habeas corpus* is to be determined by the condition existing at the time of the final decision thereon. *Id.*

Affirmed.

APPEAL from an order of the District Court dismissing a petition for *habeas corpus*.

Mr. Walter Nelles, with whom *Mr. Isaac Shorr* was on the briefs, for appellant.

Mr. Solicitor General Beck and *Mr. George Ross Hull*, Special Assistant to the Attorney General, appeared for appellee.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

In 1911 Mensevich emigrated from Russia to the United States. In 1921 he was arrested in deportation proceedings, as an alien in this country in violation of law. Act of October 16, 1918, c. 186, §§ 1 and 2, 40 Stat. 1012, as amended June 5, 1920, c. 251, 41 Stat. 1008. After a hearing, the warrant for deportation issued. Then this petition for a writ of *habeas corpus* was brought in the federal court. It was dismissed without opinion; the relator was remanded to the custody of the Commissioner of Immigration for the Port of New York; and a stay was granted, pending this appeal. The case is here under § 238 of the Judicial Code, the claim being that Mensevich was denied rights guaranteed by the Federal Constitution.

The Government moved under Rule 6 of this Court to dismiss, insisting that the appeal does not present a substantial question. Consideration of the motion was postponed until the hearing on the merits. The grounds on which the detention was challenged in the petition are the same as those which were held to be unsound in

United States ex rel. Bilokumsky v. *Tod*, 263 U. S. 149. That decision was not rendered until after this appeal was taken. The motion to dismiss is, therefore, denied. *Sugarman* v. *United States*, 249 U. S. 182, 183. In the traverse to the return the legality of the detention is challenged on a further ground. That ground would not have entitled the relator to bring the case here by appeal. For the only substantial question thus presented is one of the construction of a statute. But since the case is properly here this objection must be considered. Compare *Zucht* v. *King*, 260 U. S. 174, 176, 177.

The Immigration Act, February 5, 1917, c. 29, § 20, 39 Stat. 874, 890, provides that the deportation of aliens "shall, at the option of the Secretary of Labor, be to the country whence they came or to the foreign port at which such aliens embarked for the United States." Mensevich was ordered deported "to Poland, the country whence he came." He insists that the warrant for deportation is illegal, because prior to his emigration to the United States he had been a resident of Tychny, in the Province of Grodno, then a part of Russia; that, at the time the warrant for deportation issued, Grodno had not been recognized by the United States as a part of Poland; and hence, that it should have been treated by the Secretary of Labor as being still a part of Russia. The facts are that, when the warrant for deportation issued and when the judgment below was entered, Grodno was occupied and administered by Poland; that there was then a dispute between Poland and the Soviet Republic concerning the boundary line between them; and that the United States, while officially recognizing Poland, had not recognized Grodno as being either within or without its boundaries.

The term country is used in § 20 to designate, in general terms, the state which, at the time of deportation, includes the place from which the alien came. Whether

territory occupied and administered by a country, but not officially recognized as being a part of it, is to be deemed a part for the purposes of this section, we have no occasion to consider. For, since the entry of the judgment below, the Treaty of Riga has so defined the eastern boundary of Poland as to include Grodno; and the United States has officially recognized this boundary line. Grodno is now confessedly a part of Poland. The validity of a detention questioned by a petition for *habeas corpus* is to be determined by the condition existing at the time of the final decision thereon. *Stallings* v. *Splain*, 253 U. S. 339, 343. Deportation to Poland is now legal.

Affirmed.

UNITED STATES EX REL. MENSEVICH *v.* TOD, COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 148. Argued January 2, 1924.—Decided February 18, 1924.

1. An appeal brought here properly upon a constitutional proposition which is subsequently denied in another case, will not be dismissed for that reason, but other questions raised will be considered. P. 135.
2. In the provision of the Immigration Act, § 20, for the deportation of aliens to the country whence they came, "country" means the